

# EXHIBIT 1

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF WASHINGTON

3  
4 AT SEATTLE

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6  
7  
8 MICROSOFT CORPORATION, a )

9 Washington corporation, )

10 )  
11 Plaintiff, )

12 ) No. 2-10-cv-  
13 vs. ) 01823-JLR

14 )  
15 MOTOROLA, INC., and MOTOROLA )

16 MOBILITY, INC., )

17 )  
18 Defendants. )

19  
20  
21 VIDEOTAPED 30(b)(6) DEPOSITION OF

22  
23 May 9, 2013

24 Job No. CS1663256

25 Seattle, Washington

Veritext Corporate Services

10 800-567-8658

973-410-4040

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1 BE IT REMEMBERED that on Thursday,  
2 May 9, 2013, at 315 Fifth Avenue South, Suite 1000,  
3 Seattle, Washington, at 8:59 a.m., before Karmen M.  
4 Knudson, CCR, RPR, CRR, Notary Public in and for the  
5 State of Washington, appeared JAMES JEFF DAVIDSON,  
6 the witness herein;

7 WHEREUPON, the following  
8 proceedings were had, to wit:

9  
10 <<<<<< >>>>>>

11  
12 THE VIDEOGRAPHER: Good morning.  
13 My name is Cody Malone of Veritext. The date today  
14 is the 9th day of May 2013. The time on the video  
15 monitor is approximately 8:59 a.m.

16 This deposition is being held at the Summit Law  
17 Group, 315 Fifth Avenue South in Seattle, Washington.  
18 The caption of the case is Microsoft Corporation  
19 versus Motorola, in the United States District Court,  
20 Western District of Washington at Seattle. The cause  
21 number is 2-10-CV-01823-JLR. The name of the witness  
22 today is Jeff Davidson.

23 We'd ask, at this time, would the attorneys  
24 present please voice-identify themselves and the  
25 parties they represent.

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1 MS. ROBERTS: Andrea Pallios  
2 Roberts of Quinn Emanuel, representing defendant  
3 Motorola.

4 MS. MANGIN: Elanor Mangin of Quinn  
5 Emanuel, representing Motorola.

6 MR. WION: Chris Wion from Calfo  
7 Harrigan, representing Microsoft and the witness.

8 THE VIDEOGRAPHER: Thank you.

9 At this time, we'd ask the court reporter, Karmen  
10 Knudson of Veritext, to please swear in the witness  
11 and proceed with the deposition.

12 JAMES JEFF DAVIDSON, having been first duly sworn  
13 by the Notary, deposed and  
14 testified as follows:  
15  
16

17 EXAMINATION

18 BY MS. ROBERTS:

19 Q Good morning, Mr. Davidson.

20 A Good morning.

21 Q As you heard, my name is Andrea Roberts and I'm going  
22 to be taking your deposition taken today.

23 Have you ever been deposed before?

24 A Never.

25 Q Okay. Well, I'm going to go over some of the ground



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1           If you don't ask for clarification, I'm going to  
2           assume that you understood the question.

3       A    Okay.

4       Q    Your counsel may object from time to time. Unless he  
5           instructs you not to answer, you should answer my  
6           question if you understand it.

7           Do you understand that?

8       A    I do.

9       Q    If you need a break at any time, just let me know.  
10          We'll take periodic breaks throughout the day, but if  
11          you need one, I'll be happy to take one.

12          Is there any reason why you can't give complete  
13          and truthful testimony here today?

14       A    No.

15       Q    Let's start with a little bit of your background.

16           What is your position -- or where do you work?

17       A    I work at Microsoft; a general manager there --

18       Q    Okay.

19       A    -- responsible for supply chain operations globally.

20           THE REPORTER: I couldn't hear --

21       A    General manager in supply chain, responsible for  
22          supply chain operations globally.

23          That includes distribution and logistics, which  
24          happens to be the topic here.

25       Q    (By Ms. Roberts) Okay. And are you based here in --

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1           The person whose name I don't know how to  
2           pronounce -- "Aay-fa"? Is that what you said?

3       A    "Ee-fa."

4       Q    "Ee-fa"? Where is -- is that male or female?

5       A    Male -- sorry, female.

6       Q    Where is she --

7       A    She is based in Dublin.

8       Q    Dublin? Okay.

9           And what about Bert lane?

10      A    Bert Lane.

11      Q    I'm sorry. Where is Bert Lane based?

12      A    He lives in Germany. Works in the Netherlands  
13           distribution center in Venray.

14      Q    Where is Jana Shull?

15      A    Redmond.

16      Q    Theresa Daly, is she in --

17      A    Dublin.

18      Q    -- Ireland?

19           And Shelley McKinley, where is she based?

20      A    Redmond.

21      Q    Redmond?

22           And you said Ms. McKinley is in legal?

23      A    Legal, yes.

24      Q    Is she an attorney, or do you know what her role is

25           in legal?

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1 A I am not completely clear. I'm pretty sure she is an  
2 attorney.

3 Q Okay. And what was -- what was her role?

4 A Actually, I believe she's a senior attorney.

5 She held a call with me --

6 MR. WION: I want to caution the  
7 witness, if you can answer the question without  
8 disclosing privileged information, that's fine, but  
9 if there were privileged communications with  
10 Ms. McKinley, then that's not something that you  
11 should be disclosing here today.

12 THE WITNESS: Okay.

13 A She basically alerted me to the case and triggered  
14 more discussion between Owen, myself, and Fergus.  
15 That was, for the most part, the extent.

16 And then drew me in to connections with other  
17 people at Microsoft to understand what was going on.

18 Q (By Ms. Roberts) And who were the other people at  
19 Microsoft?

20 A I can't even recall the names. I had never -- there  
21 was several of them, and I had never worked with them  
22 before. They were just different parts of the  
23 business around Windows and -- some of them in IEB,  
24 Entertainment and -- Interactive Entertainment  
25 Business -- that I just never worked with. And to be

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1 the move elsewhere. Is that correct?

2 A I don't believe I did.

3 Q Okay. And do you know where others on the team  
4 stored documents relating to the move?

5 A I -- I don't.

6 Q Is there -- I don't know how Microsoft's setup is for  
7 storage of documents, but are there, like, shared  
8 drives or folders where people store documents?

9 A I do know we set up a SharePoint for -- once we put a  
10 project manager in place, decided we're going to go  
11 make this move, to drive the implementation, we put  
12 a -- a SharePoint there. So there would be documents  
13 relating to the execution of the project.

14 Q And you said you did that once you put a project  
15 manager in place?

16 A Yes.

17 Q When was that?

18 A It would have been shortly after we decided -- and  
19 I'm -- I'm not completely positive, but I think I'm  
20 being accurate here; is -- I think we decided March  
21 8th of 2012, and then somewhere within a week, that  
22 week, we assigned a project manager. And somewhere  
23 within a few weeks after that, there was -- a couple  
24 weeks, there was probably a SharePoint up.

25 Q Okay. And when you say "we decided March 8th of

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1 2012," what was decided on that date?

2 A That we would award business to CEVA and relocate  
3 from Germany to the Netherlands.

4 Q Okay. Do you know the -- well, let me start over.

5 You stated you personally didn't search your  
6 emails to -- for collection for documents produced in  
7 this case. Is that right?

8 A I'm sorry?

9 Q Did you -- you didn't personally search your emails  
10 for documents to collect in this case?

11 A No.

12 Q Counsel or somebody else did?

13 A No.

14 Q Okay. So you don't know the -- the date range of --  
15 of emails that were searched, do you?

16 A No.

17 Q And do you know what specific categories of documents  
18 Microsoft looked for to collect to produce in this  
19 case relating to the relocation?

20 A No.

21 Q Do you know whether documents exist -- well, let's --  
22 let's talk a little bit more about players.

23 So as background, we're talking about relocation  
24 of the EMEA -- do you say "ah-mee-ah"?

25 A "Ah-mee-ah."

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1 EXAMINATION (Continuing)

2 BY MS. ROBERTS:

3 Q Mr. Davidson, I'd like to kind of get a sense of  
4 the timeline of the move from the Düren, Germany  
5 facilities to -- to Venray.

6 So, first of all, when did Microsoft decide to  
7 relocate the EMEA facilities?

8 A It was that first week of March where -- when we  
9 decided to do it. But -- somewhere in there. It was  
10 early March. Somewhere -- I mentioned March 8th  
11 earlier. I know that was an award date.

12 I think -- it was right within that same time  
13 period. It was just a -- a flurry of decisions and  
14 activity.

15 Q And when you say "March," you mean March 2012; right?

16 A Yes, March of 2012. Sorry.

17 Q When did Microsoft start considering whether it  
18 should move the EMEA facilities?

19 A Mid-January of 2012.

20 Q And who -- who ultimately made the decision to move  
21 the facilities?

22 A It would have been me; Owen Roberts, my boss; and his  
23 boss, Brian Tobey.

24 Q Brian Tobey?

25 A Yes.

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1 Q And he was Owen Roberts' boss?

2 A It was Owen's boss, yes. So Owen and I conferred.

3 Brian heard it. "Whatever you guys think is best."

4 Q And so prior to mid-January 2012, was -- was

5 Microsoft considering relocating the EMEA facilities?

6 A I'm sorry; would you repeat that?

7 Q Right.

8 Well, I think you stated that it was in mid-

9 January 2012 that Microsoft started considering

10 moving the EMEA facilities. Is that right?

11 A That's correct.

12 Q Okay. I've seen some documents dated January 1st,

13 2012.

14 Does that -- and I can show them to you, but --

15 A Yeah.

16 Q -- does that affect your recollection of what the

17 timeline was?

18 A No. I mean, it was January 2012.

19 Q Okay.

20 A We were alerted to the legal situation right -- right

21 in there, early to mid-January. And that's when it

22 started.

23 We had not considered relocating prior to being

24 alerted.

25 Q Okay. And who -- who alerted -- alerted you to the

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1 legal situation? Was that Shelley McKinley --

2 A Shelley.

3 Q -- or somebody else?

4 A Yeah, Shelley.

5 Q And what did you understand the legal situation to  
6 be?

7 A I understood, at that stage, basically what was  
8 public.

9 It was a patent infringement case. There was a  
10 risk of an injunction, where we would not be able to  
11 distribute our product to or from Germany.

12 That's basically what I understood the case to  
13 be. The rest of it was legal. And -- and, frankly,  
14 we've got plenty of legal experts. And my job was  
15 basically to hear risk; we should start considering  
16 mitigations. And that was my understanding.

17 Q Okay. So tell me about your discussions with --  
18 well, I guess, in making the decision, was that  
19 primarily discussions between you and Owen Roberts?

20 A In making decisions?

21 Q Right.

22 A My -- yes, myself and Owen, primarily.

23 Shelley would be -- she'd be aware of -- of what  
24 those were; sometimes consulted.

25 And then Fergus was a key input, because he was



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1 continuity of supply.

2 And it isn't just -- I remember the discussion  
3 wasn't -- it isn't just about, you know, if you  
4 couldn't ship for X period of time, and if just that  
5 X period of time was impacted, as those retailers  
6 need to go fill those shelves with someone's product,  
7 and it won't be ours if we're not supplying it.

8 So that risk and potential disruption far  
9 outweighed the cost of -- of moving.

10 Q Could other distribution facilities have sort of  
11 filled in to prevent that period of disruption in the  
12 event that an injunction had actually issued?

13 A Not to the -- we did evaluate that, but nowhere near  
14 the volume or scale we would require. And the cost  
15 to actually do it would pretty quickly stack up to  
16 the cost equivalent to the move.

17 We did consider that, though.

18 Q Did you have any discussions with anyone other than  
19 Owen Roberts about whether to relocate the  
20 facilities?

21 MR. WION: And in answering that,  
22 you can answer "yes" or "no," but again, I need to  
23 caution you not to disclose any privileged  
24 communications you may have had on the subject.

25 A Could you repeat the question?

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1 Q (By Ms. Roberts) Sure.

2 Is there -- did you have discussions with anyone  
3 other than Owen Roberts about whether to relocate the  
4 facilities?

5 A There were privileged conversations with legal. No  
6 one else that I could recall.

7 Q And when you say "legal," are you referring to  
8 Ms. McKinley, or anyone else?

9 A Ms. -- yes, Ms. McKinley.

10 Q Okay. Anybody else from the legal department?

11 A Not that I can recall.

12 Q Did -- did you and Mr. Roberts make presentations to  
13 anyone about whether or not the facility should be  
14 relocated?

15 A We talked -- we did speak with Brian, actually.

16 I don't think any presentations -- I mean, we did  
17 present information to Brian, but I wouldn't call it  
18 a presentation. We met with Brian, shared the  
19 information that we were looking at.

20 Q So I guess when I say "presentation," was there any  
21 documentation that was provided to Brian --

22 A Yes.

23 Q -- regarding whether to move?

24 A Yes. We -- discussions was move and move with who.

25 Q And do you know -- can you recall approximately when

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1 investigating? No.

2 Q Who -- is there somebody at Microsoft that had to  
3 sort of ultimately give the rubber stamp of approval  
4 to move the facilities out of Düren?

5 A I'm sure -- I'm sure Owen would have spoken with  
6 Brian.

7 Q Okay.

8 A Yeah, I mean, we wouldn't -- we wouldn't have gone  
9 and just done it without Brian being onboard.

10 So I'm sure Owen had a discussion with Brian. I  
11 wouldn't have been part of it.

12 Q Okay. And so does the -- would the buck stop with  
13 Brian, or would somebody above Brian have needed to  
14 approve the move?

15 A I don't know.

16 Q Okay. And there were conversations between Owen and  
17 Brian about the decision to move, that you weren't a  
18 part of?

19 A Correct.

20 Q Okay. And you don't know what was said in those  
21 discussions?

22 A Between the two of them?

23 Q Right.

24 A No; other than we continued evaluating, evaluating,  
25 evaluating, and then we decided.

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1 Q And in preparing for today, you didn't speak with  
2 Mr. Roberts or Mr. Tobey to determine what they  
3 discussed that you weren't privy to; is that right?

4 A I did not.

5 Q Okay. Were there multiple discussions with -- excuse  
6 me.

7 Were there multiple discussions with Ms. McKinley  
8 regarding whether to relocate the EMEA facilities?

9 A Yes.

10 Q Approximately how many?

11 A I -- I couldn't put a number on it.

12 Q Was it sort of -- were there ongoing discussions with  
13 Ms. McKinley on a regular basis about the decision on  
14 whether to relocate?

15 A There were -- yes, there were -- there were  
16 ongoing -- I don't know -- by "ongoing," you mean  
17 were there multiple, or --

18 Q Well, let me -- did you speak with her on a weekly  
19 basis during this process?

20 A Probably every -- yeah, about once a week at least.

21 Q Did you speak with her on a daily basis during this  
22 process?

23 A No, not on a daily basis.

24 Q So closer to once a week?

25 A Yeah, once a week, every couple weeks.

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1 this is the first large scale, I guess, can you  
2 explain to me how you're differentiating there?

3 A Yeah. I'll give you an example.

4 Düren was, I think -- I think it was a forty --  
5 450,000-square-foot facility and we --

6 THE REPORTER: Can you repeat that?

7 A Düren was a 450,000-square-foot facility and we  
8 occupied a portion of it, because other tenants  
9 occupied the rest.

10 You know, we moved from one site in Australia, as  
11 an example, to another site in Australia, but the  
12 size of the facility would have been something like  
13 maybe 40,000 square feet, 20,000 square feet. Small  
14 moves, can do them in a day or two, you're done. You  
15 know, and so nothing that I would consider even  
16 remotely close to -- to this scale.

17 We started other distribution centers, but not  
18 had to move to other ones of this size and scale.

19 Q In your tenure at Microsoft, have you ever previously  
20 considered whether to move a distribution facility  
21 because of a potential injunction in a legal case?

22 A No.

23 Q So focusing on Germany, do you know whether Microsoft  
24 has ever faced a potential injunction to -- that  
25 would have precluded the sale within or from Germany

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1 of any of its products?

2 A Not --

3 MR. WION: Objection. Vague.

4 Q (By Ms. Roberts) Sorry. Was your answer "no"?

5 A Not to my knowledge.

6 Q Okay. Nobody has ever come to you in your role -- or  
7 let me start over.

8 Nobody has ever previously come to you in your  
9 roles, being involved in operations and logistics,  
10 and asked you to analyze whether or not to move a  
11 distribution facility because there was a potential  
12 for an injunction in a legal matter?

13 MR. WION: And you're asking --

14 Q (By Ms. Roberts) Is that right?

15 MR. WION: -- in his individual  
16 capacity?

17 MS. ROBERTS: Well, I think it  
18 would fall within the 30(b)(6) topics.

19 Q (By Ms. Roberts) But if you don't know from  
20 Microsoft's perspective, then we can ask in your  
21 personal capacity.

22 A I am not aware.

23 Q You're personally not aware.

24 A Correct.

25 Q Is that right?

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1 And is that something that you --

2 A No.

3 Q -- looked into at all --

4 A Or I personally don't recall.

5 Q Is that something that you looked into at all in  
6 preparing for your deposition today?

7 A Is it -- repeat the question.

8 Q In preparation for your deposition today, did you  
9 look into whether Microsoft has previously considered  
10 whether to relocate a distribution facility because  
11 of a potential for an injunction in a legal matter?

12 A No, that was not part of my preparation.

13 Q And in your role in operations and logistics, if  
14 Microsoft had previously considered relocating a  
15 distribution facility for any reason, would that be  
16 something that you would be in the loop on?

17 A I would expect so, at the right point in time, yes.

18 Q When you say "at the right point in time," what does  
19 that mean?

20 A Meaning if -- if consulting on whether to -- to  
21 relocate or move, start up, close, I would be  
22 consulted at a point in time where that was something  
23 that needed to be considered, I would think. But I  
24 can't control --

25 Q You would hope?

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1 Q Okay. If I can turn your attention to the page that  
2 ends in numbers 2862.

3 The bottom right-hand corner of that chart,  
4 there's a go-live date of April 2nd, 2012.

5 A Yes.

6 Q Was that consistent with the timeline that you were  
7 discussing earlier in terms of trying to be up and  
8 running --

9 A That would be consistent with that timeline.

10 Q Okay. And did that date change?

11 A The date -- did -- on paper, or did the actual date  
12 change?

13 Q Did the actual timeline of having a go-live date  
14 change from April 2nd, 2012, to some later date?

15 A Yes. It changed to June 1st.

16 Q Okay. What was the reason for that change?

17 A We -- we -- there was no -- we wouldn't be ready to  
18 operate at the scale we needed to operate any sooner.

19 Q And it did ultimately go live on June 1st; right?

20 A Yes.

21 Q Okay. Were there considerations of the impact of  
22 potential injunction in connection with changing the  
23 go live date to June 1st, 2012?

24 A I think we -- there were considerations, but there  
25 weren't any other real options, because we were

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1 A We wouldn't really org- -- Microsoft would not  
2 organize it. Arvato would -- would make that work.

3 Q Okay. Now, are you aware that Motorola filed its  
4 patent infringement lawsuit against Microsoft in  
5 Germany in July of 2011?

6 A I'm not aware of the dates.

7 Q Okay. So is it fair to say, then, you don't know why  
8 Microsoft didn't start considering moving the German  
9 facilities to the Netherlands earlier than January of  
10 2012?

11 A I'm -- I'm not aware of anything that occurred before  
12 my involvement. Yeah.

13 Q You've testified today about sort of -- kind of a --  
14 what a rushed process it was to meet the deadlines.

15 Would the process have cost less to move the  
16 facilities if it were stretched over a larger period  
17 of time; you know, a few more months, perhaps?

18 A It probably would have, yes.

19 Q Would have saved cost?

20 Are you familiar with what -- what we've called  
21 the anti-suit injunction in the Washington  
22 litigation?

23 A No, I'm not.

24 Q Okay. Are you aware that Microsoft filed a motion  
25 in -- here in Washington, asking the Court to

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1 preclude Motorola from enforcing an injunction in  
2 Germany?

3 MR. WION: I just want to clarify  
4 that these questions are asked of Mr. Davidson in his  
5 individual capacity, by definition.

6 MS. ROBERTS: Well --

7 MR. WION: If you have a different  
8 understanding, let me know.

9 MS. ROBERTS: Well, let me be more  
10 clear.

11 Q (By Ms. Roberts) Microsoft filed an anti-suit motion  
12 in Washington; is that correct?

13 A I don't know.

14 Q And it didn't file that motion until March 28th,  
15 2012; is that correct?

16 A I don't know.

17 Q Okay. Do you know why Microsoft did not ask the  
18 Court, the Washington court, earlier to preclude  
19 Motorola from enforcing an injunction in Germany?

20 A I don't -- I don't know. I'm not aware.

21 Q Is it --

22 A Or don't remember. But -- yeah.

23 Q And was the timeline of filing any motions in  
24 Washington discussed with you in connection with  
25 deciding whether and when to move the Düren

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1 facilities?

2 A I -- I do remember discussions about filings.

3 I don't remember sequence, I don't recall the  
4 dates. And those were privileged conversations.

5 Q Did the dates of those filings impact Microsoft's  
6 decision on whether and when to move the Düren  
7 facilities?

8 A As I mentioned earlier, the -- the train left the  
9 station once we decided, in terms of terminations,  
10 financial commitments, making the changes, getting  
11 systems changes in place.

12 Q So are you aware that the Washington court -- or  
13 Microsoft is aware that the Washington court did  
14 issue an injunction precluding Motorola from  
15 enforcing an injunction in Germany; right?

16 MR. WION: I'm going to object.  
17 This line of questioning does not seem to be within  
18 the scope of the topic on which Mr. Davidson is here  
19 to testify.

20 But if you are interested in asking him of his  
21 personal knowledge, you may do so, to the extent he  
22 knows.

23 MS. ROBERTS: Well, I disagree,  
24 because I think it goes to mitigation of damages.

25 So if he doesn't know the answer his, that's

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1 fine, and we can fight about that later.

2 MR. WION: The objection still  
3 stands. We can figure it out later.

4 Q (By Ms. Roberts) So my question was: Are you aware  
5 that the Washington court issued an injunction  
6 precluding Motorola from enforcing an injunction in  
7 Germany?

8 MR. WION: And can we just have a  
9 standing objection to that on the same basis that I  
10 just articulated?

11 MS. ROBERTS: No. You can keep  
12 objecting.

13 MR. WION: Oh.  
14 Same objection.

15 You can answer if you know.

16 A I would need you to explain the question in long  
17 legal terms.

18 Q (By Ms. Roberts) Okay. Did Microsoft consider  
19 changing its plans -- well...

20 What did Microsoft do to avoid having to move  
21 from Germany?

22 A I cannot comment on the legal proceedings.

23 We evaluated options. We evaluated could we set  
24 up a bonded warehouse within Germany, which would be  
25 not considered -- product not being considered as

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1 Q Okay. What, if anything, did Microsoft do to avoid  
2 litigation with Motorola in Germany altogether?

3 MR. WION: Objection. Outside the  
4 scope of the deposition topic for which Mr. Davidson  
5 has been designated.

6 You can ask in his individual capacity.

7 And you can answer if you know.

8 A I don't know.

9 Q (By Ms. Roberts) Do you have any information as  
10 to -- regarding Microsoft's negotiations with  
11 Motorola over a license to patents in Germany?

12 MR. WION: Same objection.

13 A I don't know.

14 Q (By Ms. Roberts) And have you heard the term "Orange  
15 Book Procedure"?

16 A No.

17 Q So you don't have any familiarity with whether or not  
18 Microsoft followed a particular -- the Orange Book  
19 Procedure in its litigation in Germany?

20 MR. WION: Same objection.

21 A I'm not aware.

22 Q (By Ms. Roberts) Mr. Davidson, are you aware that  
23 Microsoft is alleging that the costs incurred in  
24 connection with relocating the EMEA facility to  
25 Venray was \$11.6 million?

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1 Q Right. That was long before the move?

2 A Correct.

3 Q Okay. Do you have any knowledge of any of the  
4 negotiations between Microsoft and Motorola over  
5 patent licensing?

6 MR. WION: Objection. Outside the  
7 scope of Topic 8.

8 To the extent that you're asking it in  
9 Mr. Davidson's individual capacity, he can answer if  
10 he knows.

11 A I don't.

12 Q (By Ms. Roberts) Do you know what contract Motorola  
13 breached that allegedly required Microsoft to  
14 relocate its EMEA distribution facilities to the  
15 Netherlands?

16 MR. WION: Same objection.

17 A I'm not. Not sure.

18 Q (By Ms. Roberts) I want to circle back to sort of  
19 the initial timeline on making the decision to move.

20 Who is it exactly that told you about the  
21 potential for an injunction?

22 A It was Shelley McKinley.

23 Q Okay. And then do you know if Ms. McKinley told  
24 Mr. Roberts as well, or if you told him?

25 A She told him as well.

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1 Q Okay. Do you have any knowledge of the analysis --

2 A Excuse me.

3 Q Sorry.

4 A Let me clarify.

5 Q Yeah.

6 A I know she spoke with Owen. I don't know if that's  
7 how Owen found out.

8 Q Okay.

9 A I can't -- I can't speak for them.

10 Q He might have found out --

11 A Right.

12 Q -- through other means?

13 A Right.

14 Q Do you know what analysis Microsoft performed  
15 regarding the potential need to relocate the EMEA  
16 distribution facilities before you were informed of  
17 that potential need?

18 A I don't recall.

19 Q Do you know whether any such analysis was conducted  
20 outside of the legal department prior to you being  
21 informed of the potential need to relocate the EMEA  
22 distribution facilities?

23 A I -- I don't know.

24 Q I kind of want to get a sense of what you were  
25 actually informed.

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1           So were you told there's a threat of an  
2           injunction that would limit the ability to distribute  
3           products to and from Germany, figure out a solution  
4           to that problem; or were you told, more specifically,  
5           you need to consider relocating the EMEA distribution  
6           facilities as the result for a potential for  
7           injunction?

8                           MR. WION:   And just as a reminder,  
9           counsel is not asking for you to disclose any  
10          privileged information that you might have learned on  
11          those subjects.

12       A   All those discussions were under privilege.

13       Q   (By Ms. Roberts)   Had Microsoft ever considered  
14          moving from the Dürren, Germany facilities prior to  
15          January of 2012?

16       A   No, not consid- -- not considered in earnest.   We  
17          didn't have a reason.

18       Q   So you mentioned that Arvato was starting to request  
19          increased costs for -- did you or anyone on your team  
20          contemplate looking for another vendor as a result of  
21          that?

22                           MR. WION:   Objection.   Vague.  
23          Unclear as to time.

24       Q   (By Ms. Roberts)   Can you answer the question?

25       A   Can you clarify?



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1 I just want to be clear. Are you unable to  
2 testify about what occurred in the litigation based  
3 on privilege?

4 I just want to make sure I understand the scope  
5 of what the objection was.

6 MR. WION: There's also an  
7 objection that it's beyond the scope of the topic for  
8 which he's been designated.

9 To the extent that you can answer the question in  
10 your individual capacity, feel free.

11 A Repeat it.

12 Q (By Ms. Roberts) Okay. Well, then I'll ask more  
13 specifically.

14 Do you understand that Microsoft filed a motion  
15 to preclude Motorola from enforcing an injunction in  
16 Germany?

17 MR. WION: Same objection.

18 You can answer if you know.

19 A I recall knowing.

20 Q (By Ms. Roberts) You recall knowing?

21 A I don't know the content. I don't recall the dates.

22 Q Do you recall knowing that Microsoft filed that  
23 motion before the move occurred?

24 A I don't recall.

25 Q Okay. Do you recall knowing that Microsoft did not

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1 file that motion before January 2012?

2 A I did not know that.

3 Q Did you have any discussions with counsel -- and  
4 we'll start by -- I'll ask a yes-or-no question.

5 Did you have any discussions with counsel about  
6 whether there were ways to avoid the injunction while  
7 you were working on the move?

8 MR. WION: I'm going to object  
9 and -- first, on the basis that it's beyond the topic  
10 for which Mr. Davidson has been designated, and also  
11 caution Mr. Davidson not to disclose any privileged  
12 communications in connection with any response to  
13 that question.

14 Subject to those objections, you can answer if  
15 you can.

16 A That's a lot to navigate there.

17 Honestly, my -- my recollection of the legal  
18 discussions, they're very limited.

19 Q (By Ms. Roberts) Okay. I guess I'm just -- I'm  
20 trying to get a sense of whether --

21 A This is --

22 Q -- you can't recall, or whether you recall but there  
23 is information that you can't tell me because it's  
24 privileged.

25 A We hit a -- we hit a point where it actually couldn't

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1 STATE OF WASHINGTON ) I, Karmen M. Knudson, CCR, RPR, CRR,  
2 ) ss a certified court reporter in  
County of Pierce ) the State of Washington, do hereby  
certify:

3  
4  
5 That the foregoing deposition of JAMES JEFF  
DAVIDSON was taken before me and completed on May 9, 2013,  
6 and thereafter was transcribed under my direction; that the  
deposition is a full, true and complete transcript of the  
7 testimony of said witness, including all questions, answers,  
objections, motions and exceptions;

8 That the witness, before examination, was by me  
9 duly sworn to testify the truth, the whole truth, and  
nothing but the truth, and that the witness reserved the  
right of signature;

10  
11 That I am not a relative, employee, attorney or  
counsel of any party to this action or relative or employee  
12 of any such attorney or counsel and that I am not  
financially interested in the said action or the outcome  
thereof;

13  
14 That I am herewith securely sealing the said  
deposition and promptly delivering the same to  
Attorney Andrea Pallios Roberts.

15  
16 IN WITNESS WHEREOF, I have hereunto set my  
signature on May 13, 2013.

17  
18  
19  
20  
21  
22  
\_\_\_\_\_  
, CCR, RPR, CRR  
23 Certified Court Reporter No. 1935.  
24  
25

# EXHIBIT 2

From: Theresa Daly  
 To: EMEA RSM Leadership Team, EMEA Distribution Sales Managers, EMEA RSM Country Leads, Burak Gokmen, Marc Jelebert, Neil Thompson, Oliver Kallner, Serguei Wiza, Simon Avelie, Tomasz Bucharek  
 CC: MSCS SC EMEA, MSCS Leadership Team Dublin  
 Sent: 8/12/12 8:11 AM  
 Subject: European Distribution Centre

Hi Everyone,

As a follow up to my email below I wanted to share with you an update on the change to our main distribution centre in Europe. Per my previous note we will transition our main European distribution centre from Germany to the Netherlands. The last day of operations from our facility in Germany was yesterday 31<sup>st</sup> May. From today, Friday the 01<sup>st</sup> June, all our operations will be supported from our new distribution centre located in the Netherlands.

The decision to move our main distribution centre in Europe was made with a vision for the future. To support the growth in our business over the years ahead we need to significantly scale our distribution footprint and capabilities in EMEA. A transition of this scale is not easy and has taken significant effort and resources to plan and execute. As with any project of this magnitude, our EMEA Distribution & Logistics team have worked to ensure a successful transition plus a seamless impact to our customers. However, I would ask you to be extra vigilant to any customer feedback from June 1<sup>st</sup> and feedback through our EMEA Channel Operations team in order to swiftly rectify any issues.

If there is any specific feedback or questions relating to the transition I would appreciate that you contact our Transition team.

Below are some interesting facts, figures and photos to help you understand the scale of the change and how it will position us for future success.

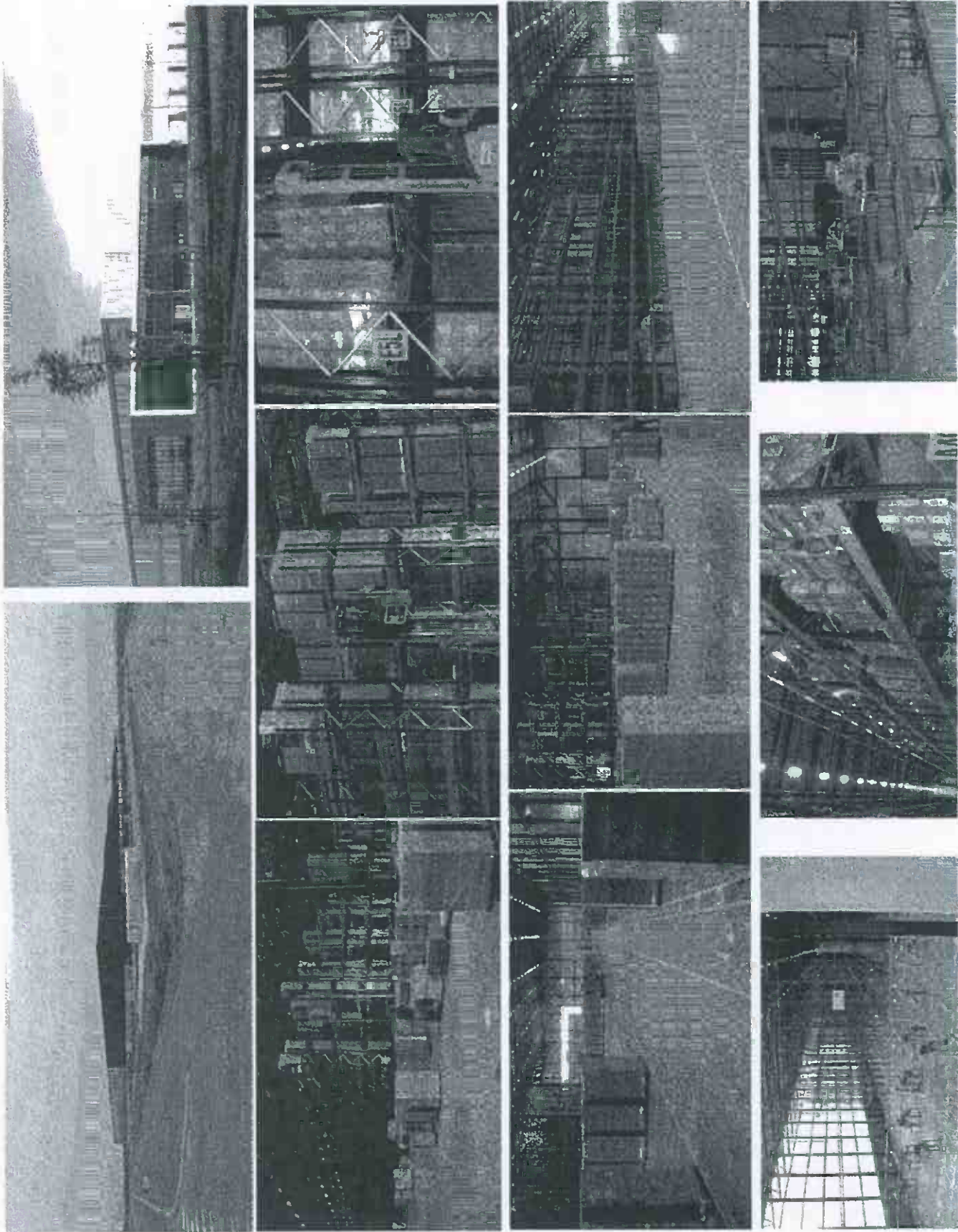
Facts and Figures	Current German Facility	New Netherlands Facility
Dedicated facility footprint	22k square metres	<2k square metres
Pallet storage space	21k pallet locations	40k pallet locations
Production lines	10 dedicated lines	20 dedicated lines
Loading bays / doors	14 bays	38 bays

New Facility Photos



CONFIDENTIAL BUSINESS INFORMATION,  
 SUBJECT TO PROTECTIVE ORDER

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CONFIDENTIAL BUSINESS INFORMATION,  
SUBJECT TO PROTECTIVE ORDER

Regards, Theresa  
GM WW Channel Operations

From: Theresa Daly

Sent: 16 May 2012 16:55

To: EMEA ISM Leadership Team; EMEA Distribution Sales Managers; EMEA BSM Country Leads

Cc: Abigail Kenny; Jason Hutchinson; Joanne Lawrence; Jonathan Ewan Lowe; Jose Carlos Macias Iltai; Richard Harper; Rossan Dennis; Anthony Hardin; Paul Longstaff; Brid Hanley; Delphine Rusik; Teresa

Stapleton; Fiona Carney

Subject: European Distribution Centre

Dear Microsoft Subsidiary,

Please be advised of the following changes to Microsoft Distribution Centre operations in Europe.

From Friday 1<sup>st</sup> June 2012 the Microsoft European Distribution Centre will operate from a new location in Europe (The Netherlands). The Distribution Centre will be run by our outsourced partner CEVA Logistics.

Until the transition date of June 1<sup>st</sup> our existing distribution operations will continue to run as normal from our German facility operated by Ansaldo Bertelsmann. From June 1<sup>st</sup> we will no longer operate out of our Distribution Centre in Duren, Germany.

Changes for customers:

- Shipping paperwork will only be available in English language initially
- VAT reg. numbers will change from DE to NL – customers may need to update their systems internally.

We will be communicating the change to impacted customers next Monday 21<sup>st</sup> May.

Please note that there is no impact to our existing carrier network as part of this change and there are no changes to our Distribution Centre in Birmingham UK and operations will continue from there as normal.

There is no change to the Commercial programs operating from Hertzbrook in Germany.

If you have any questions or would like further details regarding this transition please email Richard Harper [rdah@Microsoft.com](mailto:rdah@Microsoft.com).

Yours Sincerely,

Theresa Daly  
GM WW Channel Operations

CONFIDENTIAL BUSINESS INFORMATION,  
SUBJECT TO PROTECTIVE ORDER

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# EXHIBIT 3



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE  
oOo

MICROSOFT CORPORATION,

Plaintiff,

CASE NO. C10-1823-JLR

vs.

MOTOROLA, INC., et al.,

Defendant.

---

MOTOROLA MOBILITY LLC,  
et al.,

Plaintiff,

vs.

MICROSOFT CORPORATION,  
Defendant. /

VIDEOTAPED DEPOSITION OF  
OWEN ROBERTS  
Wednesday, May 22, 2013  
Reno, Nevada

Job No. CS1671951

REPORTED BY: MICHELLE BLAZER  
CCR #469 (NV) - CSR #3361 (CA)

1 oOo

2 APPEARANCES

3 FOR MICROSOFT:

CALFO HARRIGAN LEYH & EAKES

4 Attorneys at Law

999 Third Avenue, Suite 4400

5 Seattle, Washington 98104

By: Christopher T. Wion, Esq.

6 -and-

7 David E. Killough, Esq.

8 Assistant General Counsel

MICROSOFT CORPORATION

9 One Microsoft Way

Redmond, WA 98052

10 FOR MOTOROLA:

11 QUINN EMANUEL URQUHART & SULLIVAN

12 Attorneys at Law

13 555 Twin Dolphin Drive

14 Redwood Shores, California 94065

By: Andrea Pallios Roberts, Esq.

15 ALSO PRESENT:

16 David Corrao, Videographer

17 oOo

1	I N D E X		
2	EXAMINATION		PAGE
3	BY MS. ROBERTS:		7
4			
5	EXHIBITS		
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7	1	Germany High Level Plan/Scope/Status dated 21/02/12	45
8	2	PERF110-Arvato Heat Map Report Period FY13 - Mar	52
9	3	Arvato CLCA Executive Summary Report Period: FY12 - Mar	56
10			
11	4	Letter dated April 17, 2012	83
12	5	FMV Scorecard - May 11th 2012 KPI Dashboard Summary	85
13	6	Email chain dated 20 January 2012	90
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18	10	Email chain dated 3/8/2012	104
19	11	Email dated 3/22/2012	105
20	12	Email dated 6/12/2012 with attached DTV Move Metrics	106
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22	13	SC Transition Proposal February 23rd, Dublin	107
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24	15	Email string dated 1/19/2012 and 1/20/2012	118
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1 Reno, Nevada, Wednesday, May 22, 2013

2 1:00 o'clock, p.m.

3 oOo

4 PURSUANT TO NOTICE, and on Wednesday, the 22nd  
5 day of May 2013, at the hour of 1:00 p.m. of said day, at  
6 the offices of Microsoft, Reno, Nevada, before Michelle  
7 Blazer, a Certified Court Reporter, personally appeared  
8 OWEN ROBERTS.

9 oOo

10 THE VIDEOGRAPHER: We are on record. The date  
11 is Wednesday May 22nd, 2013, and the monitor time is  
12 approximately 1:03 p.m.

13 This is the video deposition of Owen Roberts in  
14 the matter of Microsoft, plaintiff, versus Motorola, the  
15 defendant. The case number is C-10-1823-JLR as filed in  
16 the United States District Court for the Western District  
17 of Washington at Seattle.

18 This deposition is being held at Microsoft  
19 Conference Room C-1, 6840 Sierra Center Parkway, Reno  
20 Nevada.

21 The court reporter is Michelle Blazer of Bonanza  
22 Reporting. I am a Certified Court Videographer, my name  
23 is David Correo of A. Correo Video. My address is 5375  
24 Kietzke Lane, Reno, Nevada.

25 Please note that the audio and video will

1 continue to record unless all parties have agreed to go  
2 off line -- correction, go off the record.

3 The microphones are sensitive and will pick up  
4 whispers and private conversations.

5 Counsel will now introduce themselves, the name  
6 of their firm and who they represent, counsel for the  
7 plaintiff first, please.

8 MR. WION: Chris Wion, Calfo Harrigan for  
9 Microsoft and the witness.

10 MR. KILLOUGH: David Killough for Microsoft.

11 MS. ROBERTS: Andrea Pallios Roberts of Quinn  
12 Emanuel for defendant, Motorola.

13 THE VIDEOGRAPHER: Will the court reporter  
14 please swear in the witness.

15 OWEN ROBERTS,  
16 called as a witness in said case,  
17 having been duly sworn,  
18 was examined and testified as follows:

19 EXAMINATION

20 BY MS. ROBERTS:

21 Q Good afternoon, Mr. Roberts.

22 A Hi.

23 Q As you just heard, my name is Andrea Roberts and  
24 I will be taking your deposition today.

25 Will you please state your full name for the

1 Q Okay. So the Xbox would be distributed from  
2 this facility?

3 A Correct.

4 Q But the facility would not be limited to the  
5 Xbox; correct?

6 A No. No, ma'am.

7 Q Okay. So do you know what analysis Microsoft  
8 had performed prior to Ms. McKinley informing you  
9 about -- about the potential need for a move?

10 Let me --

11 A I don't understand the question.

12 Q That was a bad question.

13 Prior to you being informed that there was a  
14 potential need to relocate the facility out of Germany,  
15 do you know what analysis Microsoft had performed to  
16 determine that there was that potential need?

17 A No, I don't.

18 Q Do you know if Ms. McKinley was working with  
19 anybody else at Microsoft to determine whether there was  
20 a potential need to relocate?

21 A I don't think I understand the question.

22 Q I guess I'm -- I'm trying to get -- get at who,  
23 if anyone, Ms. McKinley was working with on this  
24 particular issue, if you know.

25 A Which issue?



1 in deciding between Arvato's selection and CEVA's  
2 selection; is that right?

3 A Correct.

4 Q Okay. So taking a step back to the decision to  
5 actually relocate the German facility, were you involved  
6 in that decision?

7 A I want to clarify the question.

8 Q Sure.

9 A I thought I had already covered the fact that I  
10 said back in January we were informed that we were -- we  
11 were being -- we had a court litigation pending against  
12 us which -- which would probably require us to move our  
13 facility in order to keep doing business in Europe.

14 If you are asking that question, no, I wasn't  
15 part of that decision, that was a legal --

16 Q Okay.

17 A -- decision.

18 Q Okay.

19 A Once the -- once we had been -- we were told  
20 then to go and look for alternatives whilst the  
21 litigation continued.

22 Q Okay. So in terms of evaluating if there were  
23 any options to Microsoft other than relocating the German  
24 facility that would comply with what was going on in the  
25 litigation, did -- did you evaluate any other options?

1 they believed our last drop dead date would be the 1st of  
2 June and therefore I made a decision to tell the teams to  
3 shoot for the first of June.

4 As a backup plan, if April the 17th had happened  
5 we had a separate backup plan which basically meant we  
6 were going to shut down the facility in Germany and make  
7 best effort out of Venray at that date.

8 Q And when you say you went back to the legal team  
9 to let them know that the April 17th date was not  
10 achievable, who did you go back to?

11 A To Shelley McKinley.

12 Q Going back to the actual decisions that  
13 Microsoft had to make, the decision between choosing  
14 Arvato or CEVA, who had sort of the final say in making  
15 that decision; was that you or Mr. Tobey or somebody  
16 else?

17 A That decision ultimately rested with me.

18 Q Okay. And then the decision to relocate the  
19 facility out of Germany, do you know who ultimately had  
20 signoff authority on that decision?

21 A That was -- I would rephrase the point to say it  
22 wasn't a decision to move it, we were told, based on the  
23 litigation, we had to move the facility.

24 Q Okay. So I guess just to clarify, I understand  
25 your team, your team did not make the decision --

1 A Correct.

2 Q -- to relocate out of Germany?

3 A No. We were not planning to move warehouses in  
4 Europe.

5 Q Okay. That was a decision that your team was  
6 informed by legal counsel?

7 A Correct.

8 Q Okay, and do you know who on the legal team --  
9 or do you know who made the decision to move, which was  
10 then conveyed to you by legal counsel?

11 A Shelley McKinley was my contact.

12 Q Okay. But do you know whether she is the one  
13 that made the decision to move?

14 A I don't know that.

15 Q Okay. All right. So then going back to the  
16 go-live date, it was initially April 17th of 2012, it was  
17 moved to June 1st, 2012; correct?

18 A Correct.

19 Q In sort of -- in the time period between January  
20 and June 1st of 2012, were you in communication with the  
21 legal team to determine what was going on in the  
22 litigation and whether the need to move diminished or  
23 went away?

24 A No, I wasn't.

25 Q Okay. Do you know if anybody on your team was?

1 Do you see that?

2 A I see that.

3 Q Focusing first on the significant increase in  
4 their current pricing that Arvato was demanding, is that  
5 in reference to the bid that they submitted for the new  
6 facility or were they demanding an increase in their  
7 pricing at the Duren facility prior to the move?

8 A No, ma'am. This is all to do with the new  
9 facility.

10 Q Okay. And then what does it mean when you  
11 reference a scale that they, Arvato, cannot match in  
12 Europe?

13 A This was a reference to help -- This was an  
14 informed e-mail, so, to Mary Ellen Smith, to help her  
15 understand that she probably didn't know of CEVA  
16 Logistics and I was trying to position the fact that CEVA  
17 Logistics were a big player and, in fact, a significantly  
18 bigger player in the logistics field than Arvato was.

19 Just to give her some comfort in -- that we  
20 weren't selecting a small supplier with no, no  
21 background.

22 Q Okay, and what is Ms. Smith's role?

23 A Ms. Smith's role is the V.P. of Worldwide  
24 Operations which handles all, I want to call it  
25 commercially related business. MSCIS, the division I

1 products to avoid a finding of infringement in Germany?

2 A I don't know if they did or not. And if they  
3 were -- if they did, I wasn't privy to that discussion.  
4 It wasn't relevant for my job.

5 Q Do you know what, if anything, Microsoft did to  
6 avoid litigation in Germany in general?

7 A No.

8 Q Okay. So do you have any information about the  
9 licensing offers that Microsoft made to Motorola?

10 A No, I don't.

11 Q Do you have any information about the German law  
12 procedures that were or were not followed by Microsoft or  
13 Motorola?

14 A No, I don't.

15 Q I believe you testified earlier that you are not  
16 aware of the date on which Motorola filed its lawsuit in  
17 Germany against Microsoft; correct?

18 A That is correct.

19 Q Okay, and so is it fair to say you don't know  
20 why Microsoft didn't start -- or let me start over.

21 Is it fair to say you don't know why you weren't  
22 informed of the litigation prior to January of 2012?

23 A No idea.

24 Q Do you know whether Brian Tobey knew of the  
25 litigation prior to your meeting with Ms. McKinley in

1 January 2012?

2 A I have no idea.

3 Q Do you recall at that meeting -- you said it was  
4 an in-person meeting; correct?

5 A Yeah.

6 Q Do you recall if at that meeting if he seemed  
7 like he was learning something new?

8 A I can't recall. I think we were both slightly  
9 dumbfounded, so he may have been hearing it for the first  
10 time as well.

11 Q Okay.

12 A But that was my recollection. It's not  
13 something you are told every day.

14 Q Right. And you're not -- you weren't aware of  
15 the filings that Microsoft filed in the Seattle case  
16 with -- that relate to the injunction -- potential for an  
17 injunction in Germany; correct?

18 A No. Not part of that team.

19 Q So you have no information as to why those  
20 motions were filed on a particular date and not any  
21 earlier; correct?

22 A None at all.

23 Q In terms of when Microsoft started the process  
24 for relocating the distribution facility, from your point  
25 of view what, what date would that be? Would that be

1 January of 2012 or early March when the decision was made  
2 to go with CEVA?

3 A Can you clarify the question? I thought I had  
4 already testified that the first I heard about this was  
5 in mid to late January.

6 Q Right. I'm trying to get an idea from your  
7 perspective when you are thinking about when the move  
8 process started, do you go back to the January date or  
9 once you selected a vendor and were, you know, moving  
10 forward with that vendor?

11 A No. As far as my recollection is concerned, and  
12 we had not made a decision to move the facility in that  
13 January date. We had the potential risk of a move and  
14 that's why we were being prudent and starting the work of  
15 due diligence. And it was at some later stage, some date  
16 between that date and March the 8th when we finally  
17 awarded the business that we had decided that we were  
18 going that way. And I think that was closer to the March  
19 time frame than the January time frame.

20 Q Okay. And I just want to make sure I am  
21 understanding your testimony correctly.

22 I believe you testified earlier today that you  
23 and your team decided between going with Arvato versus  
24 CEVA, whereas the legal team was -- was the group that --  
25 that made the decision whether or not to move; is that

1 correct?

2 A No, that is not correct.

3 Q Okay.

4 A No. The legal team is there to give us advice.  
5 We own the business and we make the business decision  
6 based on the risks that are presented to us. And so the  
7 legal team had presented a case that said we had a very  
8 strong risk of our business being materially impacted if  
9 we lost the litigation in Germany, and then it was a  
10 decision by the business to say how to we mitigate for  
11 that risk and at what stage do we mitigate for that risk.  
12 It's not a legal decision.

13 Q So when I asked you who made the decision to  
14 relocate the distribution facility out of Germany, who  
15 was that?

16 A That was my decision with Brian Tobey as my  
17 support as far as for that. But when I presented it to  
18 Brian, where we were, the business risks associated with  
19 it, Brian agreed with my proposal.

20 Q Okay. Can you then explain to me, I guess, what  
21 information was provided to you by legal to advise you of  
22 the risk?

23 A As I stated earlier, Shelley had told us that  
24 there was this litigation pending and it didn't appear  
25 that -- and as a result of that we would be -- materially



1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, MICHELLE BLAZER, a Certified Court Reporter  
6 in and for the State of Nevada, do hereby certify:

7 That I was personally present for the purpose of  
8 acting as Certified Court Reporter in the matter entitled  
9 herein; that the witness was by me duly sworn; that  
10 before the proceedings completion, the reading and  
11 signing of the deposition has not been requested by the  
12 deponent or party;

13 That the foregoing transcript is a true and  
14 correct transcript of the stenographic notes of testimony  
15 taken by me in the above-captioned matter to the best of  
16 my knowledge, skill and ability.

17 I further certify that I am not an attorney or  
18 counsel for any of the parties, nor a relative or  
19 employee of any attorney or counsel connected with the  
20 action, nor financially interested in the action.  
21

22 \_\_\_\_\_  
23 MICHELLE BLAZER, CCR #469 (NV) CSR #3361 (CA)

24 BONANZA REPORTING - RENO  
25

# EXHIBIT 4

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., MOTOROLA  
MOBILITY LLC, and GENERAL  
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

**MOTOROLA'S SECOND NOTICE OF  
DEPOSITION TO MICROSOFT  
CORPORATION PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 30(B)(6)**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant Motorola Mobility LLC ("Motorola") will depose Plaintiff Microsoft Corporation ("Microsoft") on Monday, April 15, 2013, beginning at 9:00 AM and continuing from day-to-day thereafter, excluding Saturdays, Sundays, and holidays, until completed. The deposition shall take place at Summit Law Group, 315 Fifth Avenue South, Suite 1000, Seattle, Washington 98104-2682, or according to alternate arrangements upon which counsel jointly agree. The deposition shall be recorded by videotape, audiotape, and stenographic recording.

Microsoft shall designate one or more of its officers, directors, managing agents, or other persons who consent to testify on Microsoft's behalf as to all matters known or reasonably available to Microsoft with respect to the Topics of Examination set forth below. For each person designated, Microsoft shall advise counsel for Motorola of the identity of that person and the topic(s) on which that person shall testify at least seven days in advance of the deposition. Microsoft shall also produce all relevant documents in that person's possession at least seven days in advance of the deposition.

### **DEFINITIONS**

For the purposes of this Notice of Deposition, the following words and phrases have the following meaning:

1. "MOTOROLA" refers to Defendant Motorola Mobility, LLC.
2. "PLAINTIFF" or "MICROSOFT" refers collectively and individually to Microsoft Corporation, and all its predecessors or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries, and affiliates thereof, and all officers, agents, employees, counsel and other persons acting on its behalf, or any other person or entity subject to Microsoft's control, or which controls Microsoft.
3. The term "STANDARDS DEVELOPING ORGANIZATION" and "SDO" shall mean any standards setting organization, standards developing organization, or standards setting body, or other standards organization, including but not limited to the Institute of Electrical and Electronics Engineers ("IEEE"), the IEEE Standards Association ("IEEE-SA"), the International

1 Telecommunication Union ("ITU"), and the ITU's Telecommunication Standardization Sector  
2 ("ITU-T").

### 3 **TOPICS OF EXAMINATION**

#### 4 5 **TOPIC NO. 1:**

6 Facts relating to any and all damage MICROSOFT claims to have suffered as a result of  
7 any breach by MOTOROLA of its obligations or commitments to any SDO, including but not  
8 limited to the factual bases for MICROSOFT'S contention, if it so contends, that said alleged  
9 damage resulted from MOTOROLA'S alleged breach of its obligations or commitments to an  
10 SDO, any efforts by MICROSOFT to mitigate the damages claimed, the persons with knowledge  
11 of such facts, and documents relating to such facts.

#### 12 **TOPIC NO. 2:**

13 The attorneys' fees and other litigation costs (including the dollar amount) MICROSOFT  
14 has incurred relating to this dispute and to the actions filed by Motorola Mobility, Inc. and General  
15 Instrument Corporation in the Federal District Court for the Western District of Wisconsin (Case  
16 Nos. 3:10-CV-699, 3:10-CV-700, and 3:10-CV-826); the Southern District of Florida (Case No.  
17 1:10-cv-24063); and before the International Trade Commission (ITC Case No. 337-TA-752),  
18 including but not limited to, the factual basis for MICROSOFT'S contention, if it so contends, that  
19 said attorneys' fees and other litigation costs were incurred as a result of MOTOROLA'S alleged  
20 breach of its obligations or commitments to an SDO, other reasons why such attorneys' fees and  
21 other litigation costs were incurred, any efforts by MICROSOFT to mitigate the damages claimed,  
22 the persons with knowledge of such facts, and documents relating to such facts.

#### 23 **TOPIC NO. 3**

24 Any costs or expenses (including the dollar amount) other than attorneys' fees and other  
25 litigation costs, including without limitation lost employee time and loss of productivity, that  
26 MICROSOFT has incurred relating to this dispute and to the actions filed by Motorola Mobility,  
27 Inc. and General Instrument Corporation in the Federal District Court for the Western District of  
28 Wisconsin (Case Nos. 3:10-CV-699, 3:10-CV-700, and 3:10-CV-826); the Southern District of

1 Florida (Case No. 1:10-cv-24063); and before the International Trade Commission (ITC Case No.  
2 337-TA-752), including but not limited to, the factual basis for MICROSOFT'S contention, if it so  
3 contends, that said costs or expenses were incurred as a result of MOTOROLA'S alleged breach  
4 of its obligations or commitments to an SDO, other reasons why such costs or expenses were  
5 incurred, any efforts by MICROSOFT to mitigate the damages claimed, the persons with  
6 knowledge of such facts, and the documents relating to such facts.

7 **TOPIC NO. 4**

8 The attorneys' fees and other litigation costs (including the dollar amount) MICROSOFT  
9 has incurred relating to the actions filed by Motorola on July 6 and 7, 2011, in Germany, asserting  
10 that Microsoft infringes Motorola patents essential to the H.264 standard, including but not limited  
11 to, the factual basis for MICROSOFT'S contention, if it so contends, that said attorneys' fees and  
12 other litigation costs were incurred as a result of MOTOROLA'S alleged breach of its obligations  
13 or commitments to an SDO, other reasons why such fees or expenses were incurred, any efforts by  
14 MICROSOFT to mitigate the damages claimed, the persons with knowledge of such facts, and the  
15 documents relating to such facts.

16 **TOPIC NO. 5**

17 Any costs or expenses (including the dollar amount) other than attorneys' fees and  
18 litigation costs, including without limitation lost employee time and loss of productivity, that  
19 MICROSOFT has incurred relating to the actions filed by Motorola on July 6 and 7, 2011, in  
20 Germany, asserting that Microsoft infringes Motorola patents essential to the H.264 standard,  
21 including but not limited to, the factual basis for MICROSOFT'S contention that said costs and  
22 expenses were incurred as a result of MOTOROLA'S alleged breach of its obligations or  
23 commitments to an SDO, other reasons why such costs or expenses were incurred, any efforts by  
24 MICROSOFT to mitigate the damages claimed, the persons with knowledge of such facts, and the  
25 documents relating to such facts.

26 **TOPIC NO. 6**

27 The attorneys' fees and other litigation costs and expenses (including the dollar amount)  
28 MICROSOFT has incurred in connection with defending itself in any action in which

1 MOTOROLA sought to enjoin or exclude MICROSOFT from practicing, or importing products  
2 that practice, the 802.11 and H.264 standards, including without limitation those actions filed in  
3 the International Trade Commission, in the U.S. district courts, and in Germany, including but not  
4 limited to, the factual basis for MICROSOFT'S contention that said attorneys' fees and other  
5 litigation costs were incurred as a result of MOTOROLA'S alleged breach of its obligations or  
6 commitments to an SDO, other reasons why such fees and costs were incurred, any efforts by  
7 MICROSOFT to mitigate the damages claimed, the persons with knowledge of such facts, and the  
8 documents relating to such facts.

9 **TOPIC NO. 7**

10 Any actual or imminent loss of profits (including the dollar amount), loss of customers and  
11 potential customers, and loss of goodwill and product image suffered by MICROSOFT as a result  
12 of any claimed breach of contract by MOTOROLA, including but not limited to the identities of  
13 customers lost or potentially lost, the factual basis for MICROSOFT'S contention, if it so  
14 contends, that said losses were a result of MOTOROLA'S alleged breach of its obligations or  
15 commitments to an SDO, other possible causes of said losses, any efforts by MICROSOFT to  
16 mitigate the damages claimed, the persons with knowledge of such facts, and the documents  
17 relating to such facts.

18 **TOPIC NO. 8**

19 The costs (including the dollar amount) incurred by MICROSOFT in preparation for a  
20 potential injunction requiring MICROSOFT to withdraw its H.264-compliant products from the  
21 German market and the actions taken in preparation for the potential injunction, including without  
22 limitation costs relating to MICROSOFT's relocation of its EMEA distribution center to the  
23 Netherlands and increased costs associated with operating the EMEA distribution center out of the  
24 Netherlands instead of Germany, the history of the decision to relocate the EMEA distribution  
25 center, all other factors considered by MICROSOFT in connection with relocating the EMEA  
26 distribution center, the basis for MICROSOFT'S contention, if it so contends that said relocation  
27 and costs associated therewith was a result of MOTOROLA'S alleged breach of its obligations or  
28 commitments to an SDO, all other lawsuits against MICROSOFT pending in Germany prior to the

1 relocation of its EMEA distribution center in which MICROSOFT faced the risk of injunction,  
2 destruction of devices, or other remedies, relating to its distribution center in Germany or the  
3 distribution of its products in Germany, other options MICROSOFT considered taking to prepare  
4 for the potential injunction in Germany and the costs of such options, any efforts by MICROSOFT  
5 to mitigate the damages claimed, all communications with any third parties regarding relocating  
6 the EMEA distribution center to the Netherlands, the persons with knowledge of such facts, and  
7 the documents relating to such facts.

8 **TOPIC NO. 9**

9 The costs (including the dollar amount) incurred by MICROSOFT in preparation for a  
10 potential injunction requiring MICROSOFT to withdraw its Xbox products from the U.S. market  
11 and the actions taken in preparation for the potential injunction, all other factors considered with  
12 respect to those actions, the factual basis for MICROSOFT'S contention, if it so contends, that  
13 said costs were incurred as a result of MOTOROLA'S alleged breach of its obligations or  
14 commitments to an SDO, all other lawsuits against MICROSOFT pending in the United States in  
15 which MICROSOFT faced the risk of injunction, destruction of devices, or other remedies,  
16 relating to its manufacturing or distribution of its products in the United States, other options  
17 MICROSOFT considered taking to prepare for the potential injunction in the United States and the  
18 costs of such options, any efforts by MICROSOFT to mitigate the damages claimed, the persons  
19 with knowledge of such facts, and the documents relating to such facts.

20 **TOPIC NO. 10**

21 Facts relating to any irreparable harm or other harm not adequately compensable at law  
22 that MICROSOFT claims it has suffered or will suffer as a result of any breach by MOTOROLA  
23 of its obligations or commitments to any SDO, persons with knowledge of such facts, and the  
24 documents relating to such facts.



1 DATED this 5th day of April, 2013.

2  
3  
4 SUMMIT LAW GROUP PLLC

5 By /s/ Ralph H. Palumbo

6 Ralph H. Palumbo, WSBA #04751

7 Philip S. McCune, WSBA #21081

8 Lynn M. Engel, WSBA #21934

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11 *lynne@summitlaw.com*

12 By /s/ Thomas V. Miller

13 Thomas V. Miller

14 MOTOROLA MOBILITY LLC

15 600 North U.S. Highway 45

16 Libertyville, IL 60048-1286

17 (847) 523-2162

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Kathleen M. Sullivan

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By /s/ Brian C. Cannon

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By /s/ William C. Price

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**PROOF OF SERVICE**

I am employed in the County of San Mateo, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139.

On April 5, 2013, I served true copies of the following document(s) described as **MOTOROLA'S SECOND NOTICE OF DEPOSITION TO MICROSOFT CORPORATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6)** on the interested parties in this action as follows:

microsoft-motorola@calfoharrigan.com

Project-MS\_Moto\_WDWA\_343\_1823@sidley.com

rcederoth@sidley.com

**BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from meghanbordonaro@quinnemanuel.com on April 5, 2013, by transmitting a PDF format copy of such document(s) to each such person at the e mail address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 5, 2013, at Redwood Shores, California.

s/Meghan E. Bordonaro

Meghan E. Bordonaro

# EXHIBIT 5

## Elanor Mangin

---

**From:** Andrea P Roberts  
**Sent:** Wednesday, May 01, 2013 3:04 PM  
**To:** Microsoft v Moto Breach of RAND Case  
**Subject:** FW: 30(b)(6) Deposition Notices

---

**From:** Chris Wion [<mailto:chrisw@calfoharrigan.com>]  
**Sent:** Wednesday, May 01, 2013 2:04 PM  
**To:** Ralph Palumbo; Art Harrigan  
**Cc:** Andrea P Roberts; Brian Cannon; Phil McCune; Marcia Ripley; Cheryl McCrum; MSFT-Motorola; [Project-MS Moto WDWA 343 1823@Sidley.com](#)  
**Subject:** RE: 30(b)(6) Deposition Notices

Ralph,

As we discussed during our meet and confer on Monday, subject to Microsoft's stated objections, Microsoft has designated David Killough, Jeff Davidson, and John DeVaan to address topics 2, 4, 6, 8 and 10 of Motorola's Second 30(b)(6) Deposition Notice. Microsoft also is designating David Treadwell to address aspects of Topic 10 that relate to the Xbox; Mr. DeVaan will address that topic only as it relates to Windows.

As we stated on Monday, Mr. Killough is available on May 6 and Mr. DeVaan is available on May 7 (from 12 – 4). In addition, we can confirm that Mr. Davidson is available on May 9 and Mr. Treadwell is available on May 17 (from 12 – 5). Please let us know if Motorola plans to go forward with these depositions on this schedule.

To reiterate Microsoft's position on how depositions will be counted, if this multi-part 30(b)(6) deposition is concluded in 7 hours or less, Motorola will have used only 1 of its 4 damage depositions. Anything over 7 hours would be treated as a second deposition. In addition, if Motorola spends an excessive amount of time questioning any 30(b)(6) designee in his personal capacity, Microsoft reserves the right to treat each such instance as a separate deposition.

-Chris

---

**From:** Ralph Palumbo [<mailto:ralphp@SummitLaw.com>]  
**Sent:** Tuesday, April 30, 2013 4:31 PM  
**To:** Chris Wion; 'Art Harrigan'  
**Cc:** 'Andrea P Roberts'; 'Brian Cannon'; Phil McCune; Marcia Ripley; Cheryl McCrum  
**Subject:** RE: 30(b)(6) Deposition Notices

Art and Chris,

Disregard my email below. I misunderstood and have now clarified our position with the rest of our team. We plan to treat each 30(b)(6) deposition notice as a separate deposition for purposes of Judge Robart's limits on the number of depositions that are permitted. A second notice is forthcoming. It's our position that the 30(b)(6) deposition should not be limited to 7 hours, especially in light of the multiple witnesses that apparently will be provided for each notice.

Ralph

---

**From:** Ralph Palumbo  
**Sent:** Tuesday, April 30, 2013 3:57 PM  
**To:** 'Chris Wion'; 'Art Harrigan'  
**Cc:** Andrea P Roberts; Brian Cannon; Phil McCune; Marcia Ripley; Cheryl McCrum  
**Subject:** 30(b)(6) Deposition Notices

Chris and Art,

This is to confirm our agreement that the 30(b)(6) deposition on multiple topics will be treated as a single deposition of up to 7 hours for purposes of Judge Robart's four deposition limit on damages, even though the topics will be covered by multiple Microsoft witnesses and we are serving multiple 30(b)(6) notices on distinct topics. If we exceed 7 hours, the additional hours will be counted as a 2<sup>nd</sup> deposition, if we exceed 14 hours the additional hours will be counted as a third deposition, etc.

Ralph

----- Summit Law Group -----

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# **EXHIBIT 6**

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Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF WASHINGTON  
3 AT SEATTLE

4 -----  
5 MICROSOFT CORPORATION, a  
6 Washington corporation

7  
8 Plaintiff

9 Vs

10 MOTOROLA, INC., MOTOROLA  
11 MOBILITY LLC, and GENERAL  
12 INSTRUMENT CORPORATION

13 Defendants

14 Case No: C10-1823-JLR  
15 -----

16 CONFIDENTIAL

17 Videotaped Deposition of Theresa Daly

18 At: 9:12 a.m.

19 Thursday, 30th May 2013

20 At the offices of:

21 Regus  
22 Alexandra House  
23 The Sweepstakes  
24 Ballsbridge, Dublin, Ireland

25 Job No. CS1674023

Veritext Corporate Services



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Page 2

APPEARANCES

For the Plaintiffs Microsoft:

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ekelly@sidley.com

For the Defendants Motorola, et al.:

Mr. Willaim C. Price, Esq.  
Ms. Elanor A. Mangin, Esq.

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5th Floor  
Redwood Shores, California 94065  
Tel: (650) 801-5000  
williamprice@quinnemanuel.com  
elanormangin@quinnemanuel.com

Also Present:

Kay Hendrick - Court Reporter  
David Ross-Elliott - Videographer

## CONFIDENTIAL

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## I N D E X

WITNESS:

THERESA DALY (Sworn) 6

Examination by Mr. Price 6

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## PREVIOUSLY MARKED EXHIBITS

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Exhibit Davidson 4	...	...	...	10
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1 Thursday, 30th May 2013

2

3 THE VIDEOGRAPHER: Good morning. This

4 is the beginning of Tape One, Volume One in the

5 video deposition of Miss Theresa Daly. This is

6 being held at the Regus Offices at Alexandra

7 House, The Sweepstakes in Ballsbridge, Dublin

8 Ireland. This is being taken on 30th May 2013 at

9 12 minutes past 9 a.m. This deposition is being

10 taken in the matter of Microsoft Corporation, a

11 Washington Corporation, the Plaintiff, versus

12 Motorola Inc., Motorola Mobility LLC and General

13 Instrument Corporation, the defendants. The case

14 number is C10-1823-JLR. This is being heard

15 before the United States District Court for the

16 Western District of Washington, Seattle.

17 The Court Reporter here today is Kay

18 Hendrick of Veritext National Deposition and

19 Litigation Services and I am the videographer. My

20 name is David Ross Elliott also of Veritext

21 National Deposition and Litigation Services.

22 Would all of counsel introduce

23 themselves please for the record and whom they

24 represent?

25 MR PRICE: Bill Price representing

Veritext Corporate Services

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1 Motorola.

2 MS MANGIN: Elanor Mangin also of  
3 Motorola.

4 MS KELLY: Erin Kelly representing  
5 Microsoft.

6

7

THERESA DALY

8

having been duly affirmed,

9

testified as follows:

10 Examination by Mr Price:

11

Q. Can you tell us your name?

12

A. Yes, Theresa Daly.

13

Q. Mrs Daly, where do you work?

14

A. I work with Microsoft Dublin.

15

Q. How long have you worked with

16

Microsoft Dublin?

17

A. I have worked almost six years.

18

Q. And what is your current position?

19

A. My current position I am the General

20

Manager of the supply chain for MSCIS Division.

21

Q. Could you tell us first what MSCIS

22

stands for?

23

A. It is the manufacturing -- I have to

24

remember myself. It is the Manufacturing Supply

25

Chain and Information Services.

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1 Q. So why did you glance at it?

2 A. So that, I mean, as in terms of  
3 signing I obviously, what is the correspondence,  
4 what is the name of the company, so Arvato  
5 I recognize Arvato. I know it is one of our key  
6 vendors so that is really it to confirm that.

7 Q. So as the senior person in charge of  
8 this difference when you reviewed this letter to  
9 sign it the reason you reviewed it was to make  
10 sure it was to Arvato?

11 A. Yes.

12 Q. Is there any other reason why you as  
13 the senior person in the division before signing  
14 off on this letter would review this letter other  
15 than just to make sure that it was going to the  
16 right person?

17 MS KELLY: Object to the form.

18 MR PRICE: Is there any other reason  
19 that you glanced at this letter other than to make  
20 sure it was going to Arvato?

21 A. No.

22 Q. So you didn't actually read any of  
23 the substance of the letter?

24 A. No.

25 Q. You didn't know anything about any

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1 of the contents of letter before you signed it?

2 A. I would have had a heads up as to  
3 what was happening but at the time I was not  
4 involved in the discussions. I was not involved  
5 in any of the decision making. It was not within  
6 my responsibility.

7 Q. Did you ever receive anything back  
8 from Arvato to the effect of, Ms Daly, I don't  
9 know why we are receiving this from you because  
10 you don't know anything about this?

11 MS KELLY: Object to the form.

12 A. No.

13 MR PRICE: You understood that the  
14 person receiving this letter would think that the  
15 letter was, in fact, from you.

16 MS KELLY: Object to the form. Calls  
17 for speculation.

18 A. I mean I don't understand the  
19 question.

20 MR PRICE: Did you have an understanding  
21 that whoever received this letter would have the  
22 impression that this letter was a letter which  
23 came from you?

24 A. It came as a signature, so my  
25 signature as the only authorized person to sign

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1 A. Yes, it was in the corridor, just a  
2 few minutes.

3 Q. Earlier you said that the decision  
4 to move out of Germany that Legal was involved,  
5 correct?

6 A. That's what Owen said at the time.

7 Q. Again anything you know about why  
8 the move took place is what you heard from  
9 Mr Roberts?

10 A. Yes.

11 Q. So when Mr Roberts told you Legal  
12 was involved in a decision to move the  
13 distribution center out of Germany, did he tell  
14 you if he had any role himself in making that  
15 decision?

16 MS KELLY: It's been asked and answered.

17 A. No, he didn't tell me directly but  
18 he was the global supply chain manager so he was  
19 clearly involved in the process, but I do not know  
20 as to what meetings he was in. I do not know  
21 specifically what decisions he would have made.  
22 That I don't know.

23 MR PRICE: So Mr Roberts told you -- I  
24 am trying to get clear what he told you as to what  
25 you assumed, do you understand?



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1           A. I just read what's -- what I am  
2 informed of here.

3           MR PRICE: Okay. That is all I am  
4 saying, you did read this --

5           A. I did read it, yes.

6           Q. We are talking over each other. You  
7 did read Exhibit 4, Daly Exhibit 4?

8           A. Yes.

9           Q. Around April 2002 and you were  
10 informed there had been a German court decision  
11 that found Microsoft had infringed on Motorola's  
12 patents, right?

13          A. Right, this is what the document  
14 says. Yes.

15          Q. Did you hear anything more about  
16 that after receiving this e-mail?

17          A. No. I may have received another  
18 e-mail from PR, but I just don't recall if I did  
19 or didn't right now.

20          Q. Do you recall in the April 2012  
21 timeframe -- make it simple here. At any time in  
22 2012 did you have any understanding about  
23 decisions in courts about injunctions in  
24 connection with any litigation between Motorola  
25 and Microsoft?

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1 in a patent case between Motorola and Microsoft?

2 A. Yes, Owen gave me a heads up at the  
3 end of January which we talked about earlier.

4 Q. But this particular e-mail seems to  
5 refer to a decision that was just made, do you see  
6 on the first page where this talks about "In  
7 response to the Motorola versus Microsoft decision  
8 in Mannheim which we received within the past  
9 hour."?

10 A. Then if they received it within the  
11 past hour this is the first notice I would have  
12 had of whatever the decision was made, and I  
13 basically followed the guidelines which is  
14 basically that if we needed to use a statement,  
15 this is the statement. If there was any other  
16 mails or questions go directly to Tom Baumgartner  
17 immediately.

18 Q. On the second page here in the sub  
19 headline it says:

20 "German court finds that Microsoft has  
21 infringed on Motorola's patent in this case."

22 At the time that you received this  
23 e-mail, at that time you read this and understood  
24 there had been a decision in the case, right?

25 MS KELLY: Object to the form.

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1 mean, I don't follow the PR side of it. I don't  
2 manage it. Basically we get guidance from PR and  
3 we follow the guidance. So they gave us clear  
4 guidance here.

5 Q. Would you have been concerned if  
6 there had been something in the media that  
7 reflected negatively on Microsoft's ability to  
8 fulfill its commitments to its customers?

9 A. It's a kind of speculative question,  
10 but if there was a statement in the newspapers  
11 saying we could not fulfill cord orders of course  
12 I would have been concerned.

13 Q. Do you know what they mean by the  
14 "high media interest"?

15 A. No, they said we expect high media  
16 interest in this decision. If there was high  
17 media interest in the decision that I can't  
18 confirm.

19 Q. Why was it expected?

20 MS KELLY: Object to the form.

21 A. I didn't write this. This is what  
22 PR are writing, so I can't comment on what PR were  
23 working on at the time.

24 MR PRICE: At the time in April when you  
25 received this did you even know about a decision

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1 Q. And then what's this information on  
2 the embargo?

3 A. On the embargo and digital, I don't  
4 have the details behind that.

5 Q. Do you see it says:

6 "We expect high media interest in this  
7 decision. Please provide the statement below  
8 reactively and forward any additional questions  
9 that PR needs outlined below."

10 Do you see that?

11 A. Yes.

12 Q. Now, is it correct that there was  
13 high media interest in the decision of the  
14 Mannheim court --

15 MS KELLY: Object to form.

16 MR PRICE: -- in May 2012?

17 MS KELLY: Object to the form.

18 A. I can't comment on that.

19 MR PRICE: Were you aware of there being  
20 news reports or anything else in the media about a  
21 decision in the case between Motorola and  
22 Microsoft that was in Mannheim in Germany?

23 A. I don't believe it was in the Irish  
24 newspapers, but it could have been in the German  
25 newspapers. It could have been in the French. I

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1 Motorola versus Microsoft case?

2 MS KELLY: Object to the form.

3 A. I can't comment if it was sent out  
4 externally. This was an internal communication.

5 MR PRICE: Do you see Mr Cuddy had said:  
6 "This is our statement and contact information for  
7 inquiries."?

8 A. Yes, so in this case if I had a  
9 query or if I had received a query from a  
10 customer, partner, colleague then I would contact  
11 Thomas Baumgartner, and this is the guy so  
12 I wouldn't respond to anything. I would just  
13 refer everything to this person.

14 Q. On the second page there you see  
15 under:

16 "Subsidiary PR guidance, including  
17 information on embargo and digital PR." Do you  
18 see that?

19 A. Yes.

20 Q. First of all do you know what this  
21 means "Subsidiary PR guidance including  
22 information on embargo and digital PR."?

23 A. I understand what the subsidiary  
24 refers to, so the subsidiary is the sale of the  
25 subsidiary.

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1 Motorola Microsoft litigation other than the one  
2 that is attached to Daly Exhibit 4?

3 A. To be honest there may have been but  
4 I just can't recall exactly now as to how many  
5 mails came from this particular alias.

6 Q. And do you see that Mr Cuddy says:  
7 "Attached please find the PR advisory  
8 with our statement and contact information for  
9 inquiries in response to the Motorola versus  
10 Microsoft decision in Mannheim which we received  
11 within the past hour."?

12 A. Yes.

13 Q. What is the decision in Mannheim  
14 that is referred to here?

15 A. I am assuming it's what is written  
16 here.

17 Q. On the third and fourth pages?

18 A. Yes.

19 Q. If you look on the second page then  
20 you see there is a section there that says:  
21 "Worldwide PR field advisory", and it goes down,  
22 do you see a title sub headline etc? Looking at  
23 this is it your understanding that a statement was  
24 sent out externally from Microsoft regarding a  
25 decision that had been made in Mannheim on the

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1 have sent it to Jeff. I would have sent it to  
2 Jeff really so that he was completely aware of the  
3 situation in EMEA and that he also had the  
4 official PR advisory communication.

5 Q. Well, the e-mail below yours is from  
6 Dave Cuddy to GPH Communications update  
7 notification, do you see that?

8 A. Yes.

9 Q. First could you tell me who Dave  
10 Cuddy is?

11 A. I don't remember who he is.

12 Q. Were you part of the e-mail group  
13 GPH Comms update notification?

14 A. Yes, I must have been.

15 Q. What was that e-mail group?

16 A. There was -- there was a group of  
17 people that PR would have communicated to in terms  
18 of updates they felt were necessary on the case.

19 Q. By "the case" you are talking about  
20 the litigation between Motorola and Microsoft?

21 A. Yes.

22 Q. What does GPH stand for?

23 A. I can't remember.

24 Q. Had you received -- strike that.  
25 Did you receive other updates concerning the

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1 record at 12.11 p.m.

2 MR PRICE: Miss Daly, I am going to put  
3 before you a document we are going to mark as Daly  
4 Exhibit 4 and it appears to be an e-mail from you  
5 to Jeff Davidson dated May 2nd, 2012.

6 (Exhibit 4 marked for identification)

7 Miss Daly, do you have Daly Exhibit 4  
8 before you?

9 A. Yes.

10 Q. If you look it over so that I can  
11 ask you some questions about it. If you look at  
12 the first page you see it appears to be an e-mail  
13 from you to Mr Davidson dated May 2nd, 2012,  
14 correct?

15 A. Correct.

16 Q. On your part of the e-mail here it  
17 says "Comms on ruling", which I assume means  
18 "comments on ruling"?

19 A. "Communication".

20 Q. Communication?

21 A. Yes.

22 Q. So can you tell me what led you to  
23 send this e-mail to Mr Davidson?

24 A. I can't remember exactly why I would  
25 have sent it. I am trying to think why I would



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1 Q. Why did the timeline change from  
2 April 17th, to June?

3 A. That I can't tell you.

4 Q. Did Mr Davidson say anything to you  
5 about anything happening in the litigation between  
6 Motorola and Microsoft that caused the timeline to  
7 change?

8 A. No, not that I recall. No.

9 Q. Did Mr Davidson ever relate anything  
10 to you that Legal had said about the timeline?

11 A. No. I mean the only discussions  
12 that I had with Jeff were around my concerns in  
13 terms of doing this transition when it was hitting  
14 year end. It is a critical time in the Company  
15 and I certainly wouldn't have chosen to do a  
16 transition at that time of year. But that wasn't  
17 my choice, that was my view.

18 MR PRICE: We have been going for an  
19 hour and five minutes I have been told. So let's  
20 take a break?

21 A. Okay.

22 THE VIDEOGRAPHER: Going off-the-record  
23 at 11.47 am as indicated on the video screen.

24 (Short Recess)

25 THE VIDEOGRAPHER: We are back on the

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1 was anything in connection with the litigation  
2 that dictated that time period?

3 A. No, he didn't.

4 Q. When did you have these discussions  
5 about your timing concerns?

6 A. This would have been around the time  
7 that I was made aware that there was going to be a  
8 transition and that the transition was going to be  
9 to a new vendor in Europe.

10 Q. So that would have been some time in  
11 March or April?

12 A. It must have been some time in March  
13 or April, yes.

14 Q. We have looked at the correspondence  
15 that went out with your signature to Arvato  
16 talking about a termination date in April, and  
17 then one talking about a termination date in June,  
18 do you recall that?

19 A. Yes.

20 Q. So at some point the timelines  
21 changed, correct?

22 A. Correct.

23 Q. When did the timeline change?

24 A. That I don't recall. I wasn't  
25 involved in the decision to change timelines.

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1           A. He said we didn't really have a  
2 choice in the timing, that this was mitigating a  
3 risk and this was the plan they were going ahead  
4 with.

5           Q. Did he say why they didn't have a  
6 choice, what was going on in the litigation --

7           A. He didn't go through the details.  
8 He just said we were mitigating a potential risk  
9 to our business.

10          Q. Did he say why the process had not  
11 started until January 2012?

12          A. No, he didn't. No.

13          Q. Did he say or identify anything in  
14 the context of the litigation that had happened  
15 which caused him to think there was some sort of  
16 rush in doing the transition?

17          A. I don't have the details behind it,  
18 but I was under the impression that we had to  
19 complete the transition within a specific time  
20 period.

21          Q. Did he say what time period that  
22 was?

23          A. Yes, it was really it had to be done  
24 by the end of May, June.

25          Q. Did he say anything about why there

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1 said: Look I'm concerned about that?

2 A. Yeah, I mean, he told me clearly  
3 they would have training programmes put in place.  
4 They would do everything within their remit to  
5 ensure the transition was smooth, that we would  
6 have the service level.

7 Q. By Jeff you are referring to --

8 A. Jeff Davidson.

9 Q. Did Mr Davidson say anything to you  
10 as to why Microsoft decided not to continue to use  
11 Arvato as a vendor at a different location?

12 A. I didn't go through the reasons as  
13 to why they went with CEVA.

14 Q. Did you ever recommend staying with  
15 Arvato to manage the distribution center?

16 A. No, I didn't have a view on which  
17 vendor. I did have a view on the timing.

18 Q. What was your view on the timing?

19 A. My view on the timing is this was  
20 hitting our year end, and year end for the sales  
21 organization is absolutely critical in terms of  
22 meeting their budget targets, and I knew this was  
23 going to cause concern for my sales colleagues.

24 Q. What did Mr Davidson say about that,  
25 when you said about your concerns of the timing?

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1 MS KELLY: Object to the form.

2 MR PRICE: Go ahead.

3 A. Sorry, I just got distracted. So I  
4 got you up to the point that you were saying --  
5 perhaps it is better for you to repeat the  
6 question again. I do apologize, this is the  
7 second time.

8 MR PRICE: So you knew that the  
9 knowledge, the expertise and the competence of the  
10 people at CEVA running the distribution center  
11 could have an impact on whether or not you as your  
12 manager would meet your targets, your expectations  
13 for customer satisfaction, yes?

14 A. Yes.

15 Q. So at the time internally when  
16 Microsoft was discussing changing the vendor from  
17 Arvato to CEVA did you voice any concerns about  
18 changing the management team basically, I mean  
19 changing who was managing the distribution center?

20 A. To Jeff I would have. My primary  
21 concern is that we were going to maintain the  
22 service level, we were going to maintain the  
23 credibility and the level of confidence we had  
24 with the partners.

25 Q. So what was his response when you

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1 someone who was concerned about meeting targets,  
2 did you have a view as to whether or not it would  
3 have been better to have the distribution center  
4 run by people who had the expertise and the  
5 experience and the competence that you say Arvato  
6 had?

7 MS KELLY: Object to the form.

8 A. Sorry, I lost you there. Do you  
9 mind repeating?

10 MR PRICE: Sure. At the time you were  
11 told; hey, we were going to move this out of  
12 Germany into somewhere else.

13 A. Yes, correct.

14 MR PRICE: And then you were told we are  
15 switching from Arvato to CEVA?

16 A. Yes.

17 MR PRICE: And you certainly knew as the  
18 manager of Channel Operations that the competence  
19 and knowledge and expertise of the people running  
20 the distribution facility might impact customer  
21 satisfaction?

22 A. Yes.

23 MR PRICE: And might impact whether or  
24 not Microsoft would meet its targets with respect  
25 to that?

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1 the transition is completed when the service level  
2 is meeting targets.

3 Q. So was that completed in May?

4 A. Absolutely not.

5 Q. When was that completed?

6 A. That was completed I would say  
7 probably January/February this year.

8 Q. Did you ever ask anyone -- let me  
9 step back. Why did it take so long for the  
10 service level to meet targets?

11 A. A number of issues from my  
12 perspective. Number 1, we were -- we set up a new  
13 warehouse with a completely new workforce so the  
14 level of competence, level of knowledge, level of  
15 expertise was not what we were accustomed to.  
16 There was a complete changeover in systems which  
17 caused a lot of difficulties.

18 Q. Let me ask you first about the  
19 competence and knowledge and expertise. You are  
20 referring to the people who ran the distribution  
21 center?

22 A. Yes.

23 Q. And in particular CEVA?

24 A. Yes.

25 Q. Now prior to the transition, as

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1 Q. So you talked to him about a  
2 timeline?

3 A. Yes, the transition was planned to  
4 be completed by the end of May, so that was a  
5 pretty short timeline to try and leverage best  
6 practice across all the regions.

7 Q. Did you ever put anything in writing  
8 in response to this e-mail that you were not as  
9 optimistic as he was about the opportunities to  
10 create these efficiencies by updating the  
11 processes and aligning them globally?

12 A. No, not in writing. No.

13 Q. Do you know if anyone else at  
14 Microsoft said that they thought that Mr Longstaff  
15 was mistaken that the transition from Germany to  
16 the Netherlands would be an opportunity to create  
17 these efficiencies by updating processes and  
18 aligning globally?

19 A. Not that I am aware of.

20 Q. Was the transition completed in May?

21 A. No, it wasn't -- oh, it depends on  
22 what you mean by completed.

23 Q. Well, it is your definition  
24 completed?

25 A. My definition of completed is that

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1 Q. So what would have been the  
2 advantages of that, that is of having this  
3 opportunity to synchronise and align the processes  
4 globally as opposed to regionally, what would have  
5 been the advantage of that?

6 A. It makes it more productivity would  
7 be higher so it is really looking do they have  
8 best practice in North America that we are not  
9 implementing in EMEA. Is the best practice to  
10 implement in Singapore. So it is really around  
11 best practice so you come up with a more efficient  
12 management of the order book.

13 Q. Now we see at the top of this e-mail  
14 chain you did send an e-mail to Mr Longstaff about  
15 his e-mail correct?

16 A. Yes.

17 Q. Did you ever send him anything in  
18 writing where you said that you disagreed that the  
19 transition provided a great opportunity to update  
20 the processes and to align globally?

21 A. No, I didn't.

22 Q. Did you ever tell him that verbally?

23 A. I didn't tell him I disagreed. I  
24 told him I was not as optimistic as he was that we  
25 would achieve this within the timeline.

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1 A. He reported to me, yes.

2 Q. Did you disagree with him as to  
3 whether or not this transition was an opportunity  
4 to update the processes?

5 A. I wasn't as optimistic that we would  
6 have -- that within the timelines we would have  
7 the opportunity.

8 Q. And what would be the advantage of  
9 updating your processes to align globally, what  
10 would have been the advantage of that?

11 A. We always tried to make sure,  
12 because the outsourced vendor Accenture manages  
13 our business in Singapore, in North America --  
14 Accenture is the outsource partner that manages  
15 our order management globally, right. So they  
16 have centers in Buenos Aries. They have a center  
17 in Redmond, a center in Dublin and a center in  
18 Singapore, and prior to this we were a regional  
19 organisations. We only moved to a global  
20 organization in the beginning, or at least -- when  
21 was it -- the end of November 2011. Prior to that  
22 we were regional organisations. So we would have  
23 managed the processes in each of the regions  
24 slightly different and this was an opportunity to  
25 synchronise and to align.

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1 update our processes and to align globally."

2 What was your understanding as to what  
3 this was referring to?

4 MS KELLY: Object to form.

5 A. Sorry, could you perhaps expand the  
6 question for me, I am unclear on what you are  
7 looking for?

8 MR PRICE: I am asking what was your  
9 understanding as to what the word "this" referred  
10 to?

11 A. I mean Paul wrote the e-mail and he  
12 was referring to, I am assuming he is referring to  
13 the transition.

14 Q. The transition from Germany to the  
15 Netherlands --

16 A. From Germany to the Netherlands.

17 Q. So what you are telling us is at the  
18 time your view was that this would be an  
19 opportunity to update processes to align globally?

20 A. At the time it was Paul's view that  
21 this would be an opportunity.

22 Q. Did you disagree with him?

23 A. I mean, he sent the e-mail out. He  
24 didn't consult me prior to sending the e-mail.

25 Q. Mr Longstaff reported to you?

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1 paragraph:

2 "Overall this is a great opportunity to  
3 update many of our processes and to align globally  
4 and we thank you for your support during the  
5 transition."

6 Do you see that?

7 A. Yes.

8 Q. What's being referred to when the  
9 e-mail says:

10 "This move is a great opportunity to  
11 update many of our processes and to align  
12 globally."?

13 MS KELLY: Object to the form.

14 A. At the time I was a responsible  
15 Global Channel Operations which also means I was  
16 responsible for Global Order Management, and at  
17 the time we thought we would have an opportunity  
18 to align some of the processes and how we manage  
19 the order book with North America and with  
20 Singapore and with Dublin, but as it transpired we  
21 actually didn't have any time to do it.

22 Q. So let's go back at the time then,  
23 April 1st 2012. First of all in the e-mail where  
24 it says:

25 "Overall this is a great opportunity to

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1 Q. Now you are referring to the April  
2 1st 2012 e-mail that Mr Longstaff sent?

3 A. Yes.

4 Q. And you are copied on that?

5 A. Yes.

6 Q. And on the CC who are the rest of  
7 these folks copied?

8 A. Brid Harte also reported directly  
9 into me. And Danielle reports into me, and Niamh  
10 reports into Danielle.

11 Q. And were these folks, did they have  
12 the same sorts of responsibilities?

13 A. Similar, I mean Danielle manages our  
14 rebates programme. Niamh at the time, she's no  
15 longer with us, she would have been a process  
16 subject matter expert. Brid managed Western  
17 Europe and CE. So they were my team members.

18 Q. And one of the topics of this e-mail  
19 was the move of the distribution center from Duren  
20 to Venray, correct?

21 A. Yes.

22 Q. And also concerned the change of  
23 vendors from Arvato to CEVA?

24 A. Yes.

25 Q. And if you look at the last

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1 Q. Who was Mr Longstaff, what is his  
2 job?

3 A. Mr Longstaff at the time reported to  
4 me and he was the Channel Operations Manager for  
5 UK, France, Germany and the EMEA region.

6 Q. So you say: "Hi, in the future you  
7 should DRM such communication ensuring the message  
8 cannot be printed or sent to additional persons.  
9 Regards Theresa."

10 What are you referring to?

11 A. I am referring to, if you look  
12 further down the e-mail on the "to" line you see  
13 "center of Dublin own team". So we outsource the  
14 transactional management of the order book to  
15 Accenture, it is probably a group of about 60  
16 people sitting in Dublin, and any information of  
17 this sensitivity we would DRM it, which means that  
18 it cannot be printed, it cannot be forwarded, that  
19 the owner of the information is Paul. That's what  
20 DRM means. Paul Longstaff, so he would have been  
21 the owner of that e-mail and because it's  
22 sensitive I did not want one of the colleagues in  
23 the outsourced department sending it to somebody  
24 who shouldn't be aware of it, or doesn't need to  
25 be involved.

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1 2, which refers to the great relationship with  
2 Arvato, do you see that?

3 A. Umm hmm. Yes.

4 Q. After Arvato refused to extend the  
5 termination dates because Microsoft and Arvato had  
6 not reached agreement, after that point did  
7 Microsoft have great relationships with Arvato?

8 A. I can only comment on my  
9 perspective, and from my perspective in terms of  
10 fulfilling orders on time in full with the right  
11 documentation I had no issues with their service  
12 level.

13 Q. But in terms of Arvato's willingness  
14 to provide services or the cost of services did  
15 you have any knowledge of that?

16 A. I had no knowledge.

17 Q. If you look now at what we will mark  
18 as Daly Exhibit 3.

19 (Exhibit 3 marked for identification)

20 Do you see the top e-mail there is from  
21 you to Paul Longstaff?

22 A. Yes.

23 Q. Dated April 1st 2012. This is an  
24 e-mail that you sent to Mr Longstaff?

25 A. Yes.

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1 "In that letter Microsoft stated that  
2 the termination date for those services would be  
3 April 17, 2012."

4 And then in the next sentence it says:

5 "This letter is to notify you we have  
6 separate termination dates for termination of the  
7 services and operations which are as follows."

8 Do you see that first bullet point?

9 "June 4th, 2012 termination of  
10 distribution Turnkey services in Germany."

11 Do you see that?

12 A. Yes.

13 Q. Then if you look at the second page,  
14 the response from Arvato, and in the second  
15 paragraph it says:

16 "Although upon your request we were  
17 willing to enter into discussions about extension  
18 of certain services we unfortunately have not  
19 reached any agreement so far and therefore we need  
20 to expressly object to your new termination dates  
21 set out in your letter dated March 30th, 2012."

22 Do you see that?

23 A. Yes.

24 Q. And these communications took place  
25 prior to the April 2nd, 2012 e-mail, Daly Exhibit

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1           A. Because that is what they were  
2 informed. This would have been the information  
3 that went out to all my team members and the  
4 indirect team members that were sitting in Dublin.

5           MR PRICE: So the MSCIS operations that  
6 is the 110 --

7           A. That is about 110, yes.

8           MR PRICE: As of April 2, 2012 was  
9 Microsoft's relationship with Arvato "great"?

10          MS KELLY: Object to the form.

11          A. I can just comment on from my  
12 perspective running the Channel, and from the  
13 perspective of the performance I would say from my  
14 perspective yes.

15          MR PRICE: Let me ask you if you recall  
16 that in March 2012 you signed communications with  
17 Arvato asking that the termination date change, do  
18 you recall that?

19          A. No, I don't recall asking to change  
20 the termination date.

21          Q. Look at Davidson Exhibit 7, and in  
22 the third page of that and the letter that you  
23 signed in the first paragraph it refers to the  
24 February 18th, 2012 letter and in the second  
25 sentence it says:

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1 European distribution center out of Germany?

2 MS KELLY: Object to the form.

3 A. Sorry, could you just say that  
4 again, please?

5 MR PRICE: Sure. Around this timeframe,  
6 April 2012?

7 A. Yes.

8 Q. Had Microsoft represented publicly  
9 that it was having to move its distribution center  
10 out of Germany because of the risk from the  
11 Motorola patent litigation in Germany?

12 A. That I can't recall.

13 Q. When you say this was distributed,  
14 that is referring to Daly 2, within Microsoft was  
15 it your understanding that the employees who  
16 worked for you had the understanding that  
17 Microsoft was moving the distribution center from  
18 Germany because of risks from the Motorola patent  
19 litigation?

20 MS KELLY: Object to the form.

21 A. Yes, the understanding in my  
22 employees is that we were mitigating a potential  
23 risk by moving the warehouse from Duren to Venray.

24 MR PRICE: And how would your employees  
25 have had that understanding?

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1           A. Yes, I know Jeff and Owen would have  
2 been involved.

3           Q. Anyone else?

4           A. I am sure Brian Tobey was involved.  
5 Brian Tobey was our corporate Vice President, he  
6 would have had to have been involved. I am  
7 guessing now who was involved. There would have  
8 been more on Jeff's team involved in the  
9 evaluation.

10           Q. At the time of the April 2nd, 2012  
11 e-mail, Daly Exhibit 2, who did you know was  
12 involved in an evaluation of the risks of  
13 Motorola's patent litigation against Microsoft?

14           A. I knew Jeff and Owen were involved.

15           Q. And the Legal Department?

16           A. Well Shelley was there as Owen's  
17 advisor but I can't tell you if she was present in  
18 those meetings or not, I have no idea.

19           Q. Was this PR statement released?

20           A. It was shared internally. I don't  
21 recall if it was shared externally or not.

22           Q. Do you have any memory or  
23 understanding that externally Microsoft was taking  
24 the position that because of Motorola's patent  
25 case that Microsoft was wanting to move the

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1 A. It was subsequent to Seattle.

2 MR PRICE: And what did Mr Roberts tell  
3 you about his view about the risk of disruption  
4 from Motorola's patent litigation?

5 MS KELLY: Object to the form.

6 A. He didn't tell me what his personal  
7 view was. He told me that there was a risk to our  
8 business.

9 MR PRICE: And did he tell you why he  
10 thought there was a risk to the business?

11 A. Because if we couldn't sell our  
12 products in mainland Europe then it was a clear  
13 revenue risk.

14 Q. Did Mr Roberts say that he himself  
15 had done a risk analysis of Microsoft's business  
16 as a result of the Motorola litigation?

17 A. He didn't -- he didn't directly tell  
18 me but it was clear that there was an evaluation  
19 done as to what could be a potential impact to the  
20 business.

21 Q. And you said it was clear that an  
22 evaluation had been done, do you have any direct  
23 knowledge as to who did any evaluation about the  
24 risk of disruption of Microsoft's business as a  
25 result of Motorola's patent litigation?

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1 Q. And when?

2 A. It would have been around this  
3 period, you know from the first conversation was  
4 the end of January, so it could have been March.  
5 I couldn't tell you exactly which month, but it  
6 was in that timeframe because my first  
7 conversation, very first conversation, my very  
8 first knowledge of this is when Owen gave me a  
9 heads up in our face-to-face meeting in Seattle,  
10 and that was in January.

11 Q. And we talked about the face-to-face  
12 meeting in Seattle in January?

13 A. Yes.

14 Q. And at that point you were told by  
15 Mr Roberts that this was something that was being  
16 looked into whether or not the distribution center  
17 would change, correct?

18 A. Correct, yes.

19 MS KELLY: Object to the form.

20 MR PRICE: So when is the first time  
21 that Mr Roberts told you that there was a risk of  
22 disruption as a result of Motorola's patent  
23 litigation?

24 A. I can't tell you exactly.

25 MR PRICE: It was after --

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1 Legal. Exactly who wrote it I couldn't say. It  
2 is normally a collaboration between PR and Legal.

3 MR PRICE: Do you see the last section  
4 says:

5 "The risk of disruption from Motorola's  
6 patent litigation is simply too high."

7 A. Umm hmm.

8 Q. What risks is that referring to?

9 A. The risk I understood was that there  
10 was a risk of losing the case and if we did we  
11 would not be able to sell Xbox 360 outside of  
12 Germany.

13 Q. How did you have the understanding  
14 that is the risk this was referring to?

15 A. That is what Owen told me.

16 Q. When did he tell you that was a risk  
17 as a result of litigation?

18 A. It must have been around this time.

19 Q. Around the time of April 2012 --

20 A. Yes.

21 Q. Before this timeframe of April 2012  
22 had anyone told you there was risk of disruption  
23 of Microsoft's business as a result of litigation  
24 filed by Motorola?

25 A. Yes, Owen told me.

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1 before I finish because it is such --

2 A. Okay sorry.

3 Q. -- so just try to do your best?

4 A. Okay.

5 Q. But at the end of day you are still  
6 not going to be able too master this?

7 A. I will try.

8 Q. And why is it your assumption that  
9 Ms McKinley, who was the legal advisor, is the one  
10 who drafted this?

11 A. Because all PR communication has to  
12 go via Legal prior to it being signed off. It is  
13 standard policy in the company.

14 Q. So Legal had to sign off on any PR  
15 statement?

16 A. Any of this nature, yes, we would  
17 always go to the PR Department, they work with the  
18 Legal Department. That would be the practice.

19 Q. Is there a reason why in particular  
20 that you think that Legal wrote this statement as  
21 opposed to just signing off on it?

22 MS KELLY: Object to the form.

23 A. Sorry, I made an assumption, it  
24 could have been PR that wrote this statement. It  
25 would have been a collaboration between PR and

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1 different -- beginning with "we", a different type  
2 set to the rest of the e-mail, do you see that?

3 A. Yes, I do. Yes.

4 Q. It says:

5 "We have a great relationship with  
6 Arvato and we are pleased with the quality of  
7 their services. But Motorola's refusal to live up  
8 to its patent promises has left us no choice. We  
9 would have preferred to keep our European  
10 distribution center with Arvato in Germany as it  
11 has been for many years, but unfortunately the  
12 risk of disruption from Motorola's patent  
13 litigation is simply too high."

14 Did you see that?

15 A. Umm hmm.

16 Q. Did you write those words?

17 A. No, I didn't.

18 Q. Who did?

19 A. I can't tell you exactly but my  
20 assumption at the time is it would have come from  
21 Shelley McKinley.

22 Q. And Shelley McKinley is the lawyer  
23 that was the key advisor to Mr Roberts --

24 A. Yes. Yes.

25 Q. You are answering the question

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1           A. Because it had hit the media at that  
2 stage. As far as I recall that there was a case  
3 pending with Motorola and people started to ask  
4 questions so therefore I would defer back to Owen  
5 how should we handle this internally, and Shelley  
6 would have been the main advisor on how we should  
7 handle communications.

8           Q. What hit the media as of April 2nd,  
9 2012 that resulted in this e-mail being created?

10          A. I don't recall exactly but it was  
11 public at the time. As far as I recall it was  
12 public.

13          Q. When you say it was public, tell me  
14 everything you recall?

15          A. The only thing I recall is that  
16 there was a patent issue and there was a dispute  
17 between Motorola and Microsoft over the patent.

18          Q. Do you recall it being public  
19 information at the time that there was -- that  
20 Motorola was seeking an injunction against  
21 Microsoft?

22          A. No, I can't remember the exact  
23 details at the time.

24          Q. If you look at the e-mail and if you  
25 look down there is a section in quotes, it is in a

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1 around April 2012, is that right?

2 A. Yes, it states it here. Yes.

3 Q. First can you tell me if there is a  
4 general to section there MSCIS Operations, EMEA  
5 (FTE)?

6 A. Yes.

7 Q. What is that referring to?

8 A. That refers to the team we were just  
9 talking about, the roughly about 110 people. They  
10 would all report into the MSCIS division, and FTE  
11 means they are full-time employees.

12 Q. We have got copies here, Shelley  
13 McKinley, who is that?

14 A. Shelley McKinley was from the Legal  
15 Department and she was Owen's key lead contact  
16 advisor.

17 Q. How do you know that she was  
18 Mr Roberts key lead contact advisor?

19 A. Because he said she was.

20 Q. Then Owen Roberts and Jeff Davidson?

21 A. Yes.

22 Q. So the advisory rate of the  
23 distribution center. Now first let me ask you how  
24 did this e-mail come to be, that is what was the  
25 reason for sending this e-mail?

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1 team is 50 people. My direct reports would have  
2 been about eight people at the time.

3 Q. Okay?

4 A. Then there is a whole bunch of  
5 activities from packaging to localisation, IT  
6 services that are all within the division and they  
7 would all have a dotted line to me from a people  
8 management perspective, talent management creating  
9 the community, moral, key events we were planning,  
10 from that perspective I would manage the wider  
11 group of people.

12 Q. Yes. Let me now put before you what  
13 we will mark as Daly 2. We will mark as Daly 2 an  
14 e-mail chain beginning with the April 2, 2012 from  
15 Theresa Daly to Brendan Kelly.

16 (Exhibit 2 marked for identification)

17 If you look at Daly 2, do you see at the  
18 top it appears to be a e-mail from you to Brendan  
19 Kelly dated April 2, 2012, do you see that?

20 A. Yes.

21 Q. And if you go to the bottom of that  
22 chain, do you see there is an e-mail from you to  
23 MSCIS Operations EMEA and others, correct?

24 A. Correct, yes.

25 Q. And this is an e-mail you sent out

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1 Q. So the people who reported to you  
2 from North America, were those managers?

3 A. Yes, they were managers. Yes.

4 Q. So did their subordinates report  
5 indirectly to you?

6 A. Sorry, I don't understand now.

7 Q. You had managers in North America  
8 reporting directly into you --

9 A. Directly into me, yes.

10 Q. And they had subordinates?

11 A. Yes, they had team members. Yes.

12 Q. And so those team members basically  
13 reported to someone who reported to you?

14 A. Yes, correct. Yes.

15 Q. So if you include those folks as  
16 indirect reporting because they reported through a  
17 manager?

18 A. Yes.

19 Q. That is how many --

20 A. 50, that is the complete team.

21 Q. Okay. I thought you said they were  
22 all in Dublin?

23 A. Okay, you asked me two questions.  
24 So one was the Channel team, so that is the direct  
25 team that I am responsible for, and that whole

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1 Distribution and Logistics. The Distribution and  
2 Logistics team in Dublin reported directly into  
3 Jeff as did the Distribution and Logistics team in  
4 North America and Asia Pacific.

5 Q. And who reported to you?

6 A. To me reported the Channel  
7 Operations team in North America, in Asia Pacific  
8 and in Dublin.

9 Q. As of February 2012 do you have any  
10 estimate as to how many people reported directly  
11 to you?

12 A. Around 50 would be a fair estimate.

13 Q. And this is both North America --

14 A. And Dublin and Singapore.

15 Q. And do you have any idea how many  
16 people reported to you indirectly, that is how  
17 many employees Microsoft had that were ultimately  
18 under your umbrella?

19 A. The indirect employees at the time  
20 would have been about 110, all based in Dublin.  
21 So they would be dotted line from a people  
22 management perspective, talent management  
23 perspective, creating supply chain identity, the  
24 community spirit. From those perspectives they  
25 would have been dotted line into me.

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1           A. Well, because this was confidential  
2 because I was given a clear remit that I was to  
3 focus on Channel and not on this area, I know the  
4 letters would have been reviewed by Owen Roberts,  
5 Jeff Davidson, and I am sure they would have had  
6 Legal validation as well.

7           MR PRICE: Who gave you the letter to  
8 sign?

9           A. It can only be one of two people. I  
10 can't remember exactly which person gave me this  
11 letter, it would either have been Jeff Davidson or  
12 Fergus Rigley. Fergus Rigley, he reports directly  
13 to Jeff.

14          Q. Why do you think it would have had  
15 to have been one of those people?

16          A. Because Jeff was the most senior  
17 person involved in this and he was overseeing all  
18 of this and Fergus reports to him in Dublin.

19          Q. At the time in February 2012 when  
20 you were the General Manager of MSCIS what were  
21 the reporting lines between you and Mr Roberts and  
22 Mr Davidson?

23          A. Okay, so I reported directly to Owen  
24 Roberts responsible for Channel. Jeff reported  
25 directly into Owen Roberts responsible for

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1 an adverse outcome in current litigation, do you  
2 see that?

3 A. Sorry. I beg your pardon, do you  
4 mind repeating that?

5 Q. Yes. Do you see in the second  
6 sentence of that letter refers to a reason that  
7 Microsoft is making a change from Arvato as being  
8 the possibility of disruption to the business  
9 because of an adverse outcome in litigation, do  
10 you see that?

11 A. Yes, I do. Yes.

12 Q. Do you have any understanding as to  
13 why in this notice Microsoft was telling Arvato  
14 the reason Microsoft was terminating the contract  
15 with Arvato?

16 A. No, I don't. I mean, I didn't write  
17 this letter so I have no understanding of why a  
18 particular sentence was phrased or there was  
19 particular information being shared with Arvato.  
20 I don't have the background.

21 Q. Who wrote the letter?

22 A. I don't know who wrote the letter.

23 Q. Do you have any belief as to who  
24 wrote the letter?

25 MS KELLY: Object to the form.

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1           A. I mean we started the project back  
2 in, I think it was February, February or March the  
3 transition project was started.

4           Q. Okay.

5           A. So the termination must have been  
6 somewhere in that period.

7           Q. Okay. Your understanding is there  
8 was some contract or contracts between Arvato and  
9 Microsoft for Arvato to basically run a  
10 distribution facility in Duren Germany?

11          A. Yes, correct. Yes.

12          Q. Do you have any idea as to when by  
13 its own terms that contract was going to end?

14          A. Oh, no, I had no idea.

15          Q. Do you have any idea as to whether  
16 that contract was a year to year contract or a two  
17 year contract or a three year contract?

18          A. No, I don't.

19          Q. In the letter that was sent out  
20 under your signature to Arvato in February 2002,  
21 if you want to look at that, that is Davidson  
22 Exhibit 4, February 13th, 2002 (sic) letter.  
23 I point out to you that the sentence in the letter  
24 which purports to say why Microsoft is making a  
25 change, where it says in the event they experience



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1 Q. -- that Microsoft was looking at  
2 changing the location of the distribution center  
3 and that Legal was somehow involved, correct?

4 A. Yes.

5 Q. Did anyone tell you how long it took  
6 for those, the examination of moving the  
7 distribution center and how long that took from  
8 the filing of the patent lawsuit in Germany?

9 A. No. Owen basically was very clear  
10 that it was a need to know basis. He was very  
11 clear that my focus had to be on maintaining the  
12 Channel Operations end of the business, and he  
13 would inform me on a need to know basis.

14 Q. Did it appear to you that when their  
15 decision had been made to move the distribution  
16 center out of Germany that there was some kind of  
17 rush in doing that, some urgency?

18 A. Yes, that was my perception.

19 Q. And did you ever talk to anyone as  
20 to why didn't we start this process earlier?

21 A. No, I didn't.

22 Q. When did Arvato Services contract  
23 with Microsoft end by its own terms?

24 A. I can't tell you exactly.

25 Q. Do you have some general idea?

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1 Q. I mean do you have an estimate, can  
2 you say between 10 kilometers and 20 or, even  
3 better, if you can say miles?

4 A. I haven't a clue really. I assume  
5 it is 50 to 60 kilometers but to be honest it is  
6 just a guess.

7 Q. Earlier you said that you had been  
8 told by Mr Roberts that there was some sort of  
9 patent litigation, correct?

10 A. Yes.

11 Q. Did you ever come to understand that  
12 that patent litigation was filed against Microsoft  
13 in Germany in like around July 2011?

14 A. July 2011?

15 Q. Yes?

16 A. No, that I don't recall. I don't  
17 recall when it was filed.

18 Q. Did you ever have any understanding  
19 as to the timing as to when the patent litigation  
20 against Microsoft was filed in Germany?

21 A. No, no, not exactly. No.

22 Q. Were you ever involved in  
23 conversations as to -- strike that. You were told  
24 sometime in January 2012 that --

25 A. Yes.

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1 Q. Now I may have already asked you  
2 this I just don't recall, have you ever seen a  
3 report like Roberts Exhibit 9 which seems to  
4 discuss where is the best place to have  
5 distribution centers and evaluating the costs?

6 A. No, I haven't. I haven't got  
7 involved in any of those types of discussions.

8 Q. On page 4 where it does refer to the  
9 business to the inbound port, do you know what  
10 that's referring to, what the inbound port is?

11 A. Yes, the inbound port is where we  
12 get our deliveries from -- primarily from Asia,  
13 and they come in by container freight and they  
14 dock in the port.

15 Q. Do you know what port that is?

16 A. No, I can't tell you specifically.  
17 I know it is in the Netherlands but I can't tell  
18 you specifically which one.

19 Q. Do you know whether -- which of the  
20 two Venray or Duren is closest to the port?

21 A. No, I don't know.

22 Q. Do you know how close Venray is to  
23 the port in the Netherlands?

24 A. No, I mean -- no, I would be  
25 guessing.

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1 have a hub in Dubai that supports some of the  
2 Middle Eastern European markets.

3 Q. So the model Microsoft uses, at  
4 least right now, does not have a single  
5 distribution center covering the UK and EMEA  
6 market?

7 A. Correct, yes.

8 Q. So let me ask you, since you have  
9 been at Microsoft have there always been multiple  
10 distribution centres covering EMEA market and UK?

11 A. Yes, there has always been a  
12 distribution center for the UK market, it services  
13 the UK market specifically and it has always been  
14 one distribution center covering EMEA since I  
15 started.

16 Q. Do you know why there are two  
17 distribution centers instead of just one?

18 A. I mean the UK would be about 40% of  
19 our market from a revenue perspective, so I think  
20 logically the market then would then need its own  
21 distribution center to support that revenue.

22 Q. Have you ever been involved in  
23 discussions within Microsoft about going to a  
24 single distribution model?

25 A. No, that never. No.

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1 Q. So were you involved in any  
2 discussions in Microsoft concerning how close to  
3 an inbound port would be best for a distribution  
4 center?

5 A. No, I have not been involved. No.

6 Q. Did you have any understanding that  
7 the distance from the distribution center to an  
8 inbound port was of any significance?

9 A. No. No.

10 Q. Let me ask you about your  
11 understanding as to the kind of the model for  
12 distribution centres that Microsoft uses. Do you  
13 see in this document it has scenario 1 on page 4  
14 where it has one distribution center and then page  
15 5 it has best continental distribution center and  
16 best British distribution center, do you see that?

17 A. Page 5. Sorry -- oh, yes, at the  
18 very top.

19 Q. Yes, at the top?

20 A. I see that, yes.

21 Q. So does Microsoft have a single  
22 distribution center that covers Britain, EMEA?

23 A. It would be a distribution center  
24 that covers the UK and only the UK market. Then  
25 Duren supports primarily the EMEA market and we

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1 heard the phrase used.

2 Q. And in what context?

3 A. I can't recall exactly. I mean, it  
4 would be just a term that is used sometimes if we  
5 are talking about where is the central hub of an  
6 activity.

7 Q. Have you heard the phrase used in  
8 connection with where a distribution center should  
9 be located?

10 A. No, I haven't.

11 Q. Let me ask you if you have heard  
12 about discussions about some of the topics on  
13 this. If you look at the fourth page it says  
14 "Scenario 1", where it says: "Best EMEA DC  
15 Heinsburg area." And first let me ask you have  
16 you seen documents where distribution center is  
17 abbreviated to DC?

18 A. Yes, I have. Yes.

19 Q. You have told us about what EMEA is.  
20 It says: "Best EMEA DC," distribution center  
21 "Heinsburg area." If you go down on that first  
22 bullet point where it talks about EMEA warehouse  
23 with a lower distance to the inbound port. Do you  
24 see that?

25 A. Yes, I do. Yes.

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1           A. No, I have just heard it used  
2 primarily by the sales organization.

3           Q. Let me put before you what we will  
4 mark as Roberts 9.

5           (Previously Marked Roberts Exhibit 9)

6           Roberts 9 appears to be a presentation  
7 entitled Network Optimization Network Design  
8 Greenfield Analysis by Arvato Services  
9 Bertelsmann. My first question is have you seen  
10 this?

11          A. No, I've not seen this.

12          Q. Have you seen any documents like  
13 this where there seems to be analysis as to where  
14 is the best place to have a distribution center?

15          A. No, I haven't.

16          Q. Have you heard of a phrase called  
17 centre of gravity?

18          A. It is a very generic question. I  
19 have heard of centre of gravity.

20          Q. Other than high school?

21          A. In this context no, I haven't, I am  
22 not familiar with exactly what the phrase means.

23          Q. So in Microsoft have you heard the  
24 phrase centre of gravity used?

25          A. Yes, I would have to say I have

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1 map. It is not something we have used here in  
2 Dublin or Europe.

3 Q. So what have you understood heat map  
4 to mean back in the colonies?

5 A. I am not really sure what it is.

6 Q. You said you have heard the phrase?

7 A. I've heard the phrase heat map which  
8 is used very much by my colleagues in the States  
9 but I think heat map, I have never worked with  
10 one.

11 Q. Sure. But when they said heat map  
12 did you pretend to know what they were talking  
13 about just to be polite or did you actually have  
14 some kind of idea --

15 A. No, I just heard the term used. I  
16 know the sales organization use a heat map when  
17 they are talking about the competitors, but I have  
18 no background in heat mapping or I don't use the  
19 concept.

20 Q. I am not asking whether you have  
21 actually used it but in the context where you have  
22 heard it used?

23 A. I have heard the word used.

24 Q. And did you understand the context  
25 in what it seemed they were referring to?



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1 report like this about another vendor or in some  
2 other context?

3 A. No, this is the first time I have  
4 ever seen anything like this.

5 Q. So I guess my question is do you  
6 have the slightest idea what these numbers mean?

7 A. No, I haven't a clue.

8 Q. Maybe you can at least tell us what  
9 some of the columns are. Do you see in the left  
10 column there seems to be, it says book of  
11 business, then it says Arvato CS SPA global  
12 English and I guess there is like a list of, do  
13 you see it is in blue type?

14 A. Sorry, I have no idea what this is.

15 Q. In connection with on-going review  
16 of distribution centers, cost performance,  
17 location, had you ever heard of something called  
18 the heat map before?

19 A. No, I mean heat map is a term we use  
20 in Microsoft but I have never personally used or  
21 seen a heat map like this.

22 Q. What does the heat map term refer to  
23 as you know it?

24 A. I mean it is really -- it is the  
25 teams in the States I have heard use the term heat

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1 Q. Today I mean, now you have as a  
2 General Manager more responsibilities than you did  
3 back in 2012, early 2012?

4 A. Correct, yes.

5 Q. Now do you get involved -- let me  
6 finish, in discussions about whether or not a  
7 particular location is the best location for a  
8 distribution center and how much is it costing and  
9 what the performance is?

10 A. Jeff is still responsible for the  
11 global strategy for distribution logistics and  
12 continues that role, so I would be involved in  
13 some discussions but I would always fall back on  
14 Jeff and his team expertise. My role is to come  
15 in with what I believe the requirements are from  
16 the customer and sales perspective.

17 Q. Let me show you what we will have  
18 marked in this deposition I guess as -- let's give  
19 what was previously marked Roberts 2.

20 (Previously Marked Roberts Exhibit 2)

21 I have put before you Roberts 2, Arvato  
22 Heat Map Report. My first question is is this  
23 something that you have ever seen?

24 A. No, I have never seen this.

25 Q. Have you ever seen any kind of

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1 location etc, that would be true with respect to  
2 the Duren distribution center as well, correct?

3 A. It would be more -- the discussions  
4 are usually more focused on cost and performance  
5 as opposed to the exact location.

6 Q. And costs and performance, as you  
7 understand, can be affected by where your location  
8 is?

9 A. They can be, yes.

10 MS KELLY: Object to form. Calls for  
11 speculation.

12 MR PRICE: How can cost and performance  
13 be related to location?

14 A. Sorry, you are asking me with  
15 respect to what?

16 MR PRICE: How can location affect a  
17 distribution center's cost and performance?

18 MS KELLY: Object to the form. Calls  
19 for speculation.

20 A. I can't answer the question, I am  
21 really not an expert in this area.

22 MR PRICE: Who were the experts in the  
23 area?

24 A. Jeff Davidson is the absolute expert  
25 and he has a team of experts reporting into him.

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1 center?

2 A. Of course I had thoughts but there  
3 again they are speculative, they are not fact.

4 Q. Well, hopefully your thoughts would  
5 be based upon fact?

6 A. Well, I am not an expert in the  
7 area, so ...

8 Q. So let me ask you whether you have  
9 shared any thoughts. Did you ever share your  
10 thoughts with anyone in Microsoft as to what would  
11 be the best location for the EMEA distribution  
12 center?

13 A. Now you are talking about  
14 specifically Duren?

15 Q. Yes --

16 A. Because we obviously have more  
17 warehouses.

18 Q. Yes, for the Duren?

19 A. For the Duren one, no. It was a  
20 really good location for us, so there was no  
21 particular discussions with respect to Duren.  
22 There were clearly discussions with respect to  
23 other parts of EMEA.

24 Q. Well, you said that there would be  
25 yearly on-going discussion as to performance,

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1 A. On performance, yes I would be.

2 Q. Were there discussions about whether  
3 or not the location of the distribution facility  
4 should be changed, was that discussed on a regular  
5 basis?

6 A. Every year the team would evaluate  
7 location network optimization. It is a constant  
8 on-going discussion.

9 Q. Were you involved in these yearly  
10 on-going discussions about where would be best to  
11 say locate the distribution center?

12 A. No, not in relation to Arvato in  
13 Germany. No.

14 Q. Why wouldn't you be involved if  
15 that -- let me step back. The location of the  
16 distribution center could effect the performance,  
17 correct?

18 A. I mean, I would be speculating to  
19 answer that question.

20 Q. Were you ever asked your opinion as  
21 to what would be the best location for a  
22 distribution center for EMEA?

23 A. No. No.

24 Q. Did you have any thoughts on what  
25 would be the best location for a distribution

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1 then there would be discussion with my  
2 distribution colleagues as to how they would  
3 deliver that service for the partner. So those  
4 types of operational service level discussions.

5 Q. Prior to 2012 did you have any  
6 discussions with anyone within Microsoft about  
7 changing the vendor?

8 A. We would have, as part of the  
9 business every single year we would have  
10 discussions around -- as part of our budgeting  
11 process there would be a normal part of  
12 discussions evaluating vendors. On the freight  
13 side of the business the team goes out every year  
14 to market to make sure that we have got the right  
15 rates. So as a normal part of the business there  
16 would be discussions happening, yes.

17 Q. As a normal part of business would  
18 there be yearly discussions about evaluating  
19 Arvato's costs and performance?

20 A. Yes, there were discussions.  
21 I wasn't part of the discussion but that is part  
22 of the business.

23 Q. Were you at least part of the  
24 discussions in connection with the performance  
25 aspect of Arvato?

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1 would pay attention to the costs of Arvato's  
2 Services?

3 A. No, I had no involvement whatsoever  
4 in the cost. I would have more involvement on  
5 whether the deliveries were on time, if the  
6 deliveries were of the right quality. If the  
7 invoicing was correct of the deliveries, etc, but  
8 that would have been my operation of involvement.

9 Q. So your involvement was more  
10 concerned with the results and not how much it was  
11 costing --

12 A. Yes.

13 Q. -- Microsoft to get those results?

14 A. Yes, I was completely focused on the  
15 results and on meetings our customer expectations  
16 and meeting the sales organisations and meeting  
17 their expectations.

18 Q. Did you have any discussions within  
19 Microsoft as to how Arvato could improve  
20 performance?

21 A. Going back the years, yes.

22 Q. What kind of discussions?

23 A. There would have been discussions,  
24 for instance, I would come in with request for a  
25 value added service for some of our partners, and

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1 THE VIDEOGRAPHER: It's gone.

2 MR PRICE: So between the time -- let me  
3 step back. During the time that Arvato was the  
4 vendor and the distribution center was in Duren in  
5 Germany.

6 A. Umm hmm.

7 Q. During that time were you as manager  
8 of Channel Operations concerned with the  
9 performance of that distribution center in  
10 Germany?

11 A. Of Arvato, no. We had actually a  
12 really good performance delivered by the  
13 distribution center in Germany, Arvato.

14 Q. So were you involved in any review  
15 of Arvato's performance in the distribution center  
16 in Germany?

17 A. No, I wasn't involved directly in  
18 any of the reviews.

19 Q. Were you involved indirectly in any  
20 reviews of Arvato's performance?

21 A. Indirectly no. I mean, we had a  
22 really good performance level at the time so there  
23 was no major issues to be discussed.

24 Q. So when you say a good performance  
25 level did you have any -- were you the person who

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1 I involved in discussions?

2 MR PRICE: Yes, were you involved in  
3 discussions -- let's step back then?

4 A. Yes.

5 Q. So you told us that some time at the  
6 beginning of 2012 that you were told by Mr Roberts  
7 that Microsoft was looking into moving the  
8 distribution facility from Germany, correct?

9 A. It was up for discussion, yes.

10 Q. Now between that and the time that  
11 you learned that a decision had been made to move  
12 out of Germany, so between those two times did you  
13 have any discussions about the effect of a move  
14 out of Germany on Channel Operations?

15 A. No.

16 Q. So prior to the move out of Germany  
17 when Arvato was the vendor and the distribution  
18 center was in Duren Germany, were you concerned  
19 about the performance of Arvato and the  
20 distribution center?

21 THE VIDEOGRAPHER: Sorry, there is a  
22 mobile phone on right next to a microphone that  
23 blocked out the question.

24 MR PRICE: It is within a few feet of a  
25 microphone. Is that better?

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THE VIDEOGRAPHER: This is the beginning of tape two, volume one of the video deposition of Ms Theresa Daly. We are on the record again at 10.39 am as indicated on the video screen.

6

7

8

MR PRICE: Ms Daly, we were talking earlier about your position as being in charge of Channel Operations?

9

10

11

12

A. Yes.

Q. So the distribution facility and how well it perform would effect, you have told us, Channel Operations?

13

14

15

16

A. Yes, that is correct.

Q. If they were performing well you would hear from your sales people or the customers, right?

17

18

19

20

21

22

23

A. Right, correct.

Q. So was -- in deciding whether or not to move from Germany to somewhere else, did anyone talk to you about what you thought the effect would be on Channel Operations, that is on customer service, on how your sales people could perform or anything of that nature?

24

25

MS KELLY: Object to the form.

A. Can I ask you to clarify as in was

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1 I often forget, so that you remain refreshed and  
2 the Court Reporter can remain refreshed?

3 A. That is good, I appreciate that.  
4 Thank you.

5 Q. Okay. We have not been going an  
6 hour, or have we? No, we haven't --

7 MS KELLY: It is close to an hour.

8 THE VIDEOGRAPHER: An hour and 11  
9 minutes.

10 MR PRICE: Somebody who knows. Would  
11 you like to take a break now?

12 A. I am actually okay at the moment.

13 MR PRICE: Would you like a break?

14 THE COURT REPORTER: Yes, I would  
15 please.

16 MR PRICE: The senior person here.

17 A. Absolutely.

18 MR PRICE: Why don't we take a 10 minute  
19 break?

20 THE VIDEOGRAPHER: This is the end of  
21 tape one, volume one of the video deposition of  
22 Theresa Daly. Going off the record at 10.23 as  
23 indicated on the video screen.

24

25 (Short Recess)

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1 those conversations if Owen felt he needed to  
2 update me on anything that is when he would do it.

3 Q. In the conversations that you had  
4 with Mr Roberts about changing from Arvato to CEVA  
5 did he make any comments about Arvato, its  
6 strengths, its weaknesses?

7 A. Not specifically, no.

8 Q. Did he say why he thought CEVA was a  
9 better choice than Arvato?

10 A. I mean he didn't say precisely what  
11 the reasons were and why they made that decision.

12 Q. Did you have any input at all as to  
13 whether or not Microsoft should switch from Arvato  
14 to CEVA?

15 A. No, I had no input whatsoever.

16 Q. Let me give you another heads up on  
17 deposition practice here just so you know.  
18 This -- we are going to be here for a while today  
19 and it is a kind of small room?

20 A. Yes.

21 Q. So if you need to take a break just  
22 say so.

23 A. Okay, thank you.

24 Q. We will try to take breaks every  
25 hour or so and you guys can remind me because

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1 to deal with the distribution was changed  
2 eventually from Arvato to CEVA?

3 A. Yes.

4 Q. Did you ever learn why Microsoft  
5 made a decision to change the vendor in charge of  
6 the distribution facility from Arvato to CEVA?

7 A. I was given an update from Owen  
8 Roberts. Basically he said we went with CEVA  
9 because given the timescale -- I am trying to  
10 remember now -- it was to do because CEVA support  
11 us in North America so they are a global operator,  
12 and he said -- I remember he was saying -- I am  
13 trying to recall. He informed me that we were  
14 going with CEVA, that we had worked with them in  
15 North America. They were a global operator, that  
16 they had a depth of experience in this particular  
17 area, but other than that I didn't have any  
18 detailed conversations.

19 Q. Do you remember was this one  
20 conversation or more than one conversation?

21 A. This would be part of -- with Owen I  
22 would have had a telephone conversation with him  
23 weekly as part of how we do business. Primarily  
24 the purpose of the phone calls is updating him on  
25 what happens in Channel Operations. So as part of

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1 Q. In 2012?

2 A. So there was a long process in 2012  
3 from January right through to year end in June, so  
4 if it came to when we were in the middle of  
5 transitioning the project then I would have a  
6 conversation with the sales organization to  
7 explain to them that we are moving the  
8 distribution center.

9 Q. I just didn't hear what you said,  
10 you would have had conversations with whom?

11 A. The sales organization.

12 Q. So my question is a little bit more  
13 direct? Did you have any conversation with anyone  
14 other than Mr Roberts as to why Microsoft had made  
15 the decision to move from Germany to somewhere  
16 else?

17 A. No, not that I recall. No.

18 Q. You talked about being given a heads  
19 up on Microsoft looking into moving from Germany,  
20 did you ever have any discussions with anyone as  
21 to Microsoft changing the vendor from Arvato to  
22 someone else?

23 A. No, not that I recall. No.

24 Q. You understand that the vendor, that  
25 is the company that, you know, was sort of hired

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1 MS KELLY: Object to the form.

2 MR PRICE: Do you understand the  
3 question?

4 A. Yes, I understand the question. No,  
5 he didn't share any information with me.

6 Q. So did Mr Roberts ever tell you who  
7 made that decision, the decision to move the  
8 distribution centre from Germany to somewhere  
9 else?

10 A. No, he didn't tell me who made the  
11 decision. He just said the decision has been  
12 made.

13 Q. Now when you had your discussion --  
14 let me step back. Did you have any discussions  
15 with anyone other than Mr Roberts as to why  
16 Microsoft would move its distribution center from  
17 Germany to somewhere else?

18 MS KELLY: Sorry, can you repeat the  
19 question?

20 MR PRICE: Sure. Did you have any  
21 discussions with anyone other than Mr Roberts as  
22 to why Microsoft would move its distribution  
23 center from Germany to somewhere else?

24 A. Could you help clarify what time  
25 period you are talking about?

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1 A. Yes, he did. Yes.

2 Q. Did he tell you -- and this is just  
3 a yes or no -- did he tell you at that time  
4 whether Legal had made a recommendation?

5 A. No, he didn't tell me.

6 Q. Did he tell you anything at all  
7 about his conversations with Legal?

8 A. No, he didn't.

9 Q. Did he tell you anything at all  
10 about his personal opinion as to whether or not  
11 the distribution centre should be moved from  
12 Germany to somewhere else?

13 A. No, he didn't.

14 Q. Did he ever tell you his personal  
15 view as to whether or not Microsoft should have  
16 moved its distribution center, the EMEA  
17 distribution centre from Germany to somewhere  
18 else?

19 A. No, he never shared a personal view  
20 with me.

21 Q. Did he ever tell you what anyone  
22 else in Microsoft's view what that move was, that  
23 someone's else opinion was that the distribution  
24 center should have been moved from Germany to  
25 somewhere else?

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1 being told about a decision being made to move out  
2 of Germany, first to be clear, your testimony is  
3 that you were not involved in any such decision in  
4 terms of making a decision or giving advice about  
5 the decision; is that right?

6 A. Yes, that is correct.

7 Q. And when Mr Roberts told you that a  
8 decision had been made to move did he tell you  
9 what his recommendation had been as to whether or  
10 not the EMEA distribution centre should have been  
11 moved out of Germany?

12 A. My main recollection with Owen  
13 Roberts was the face-to-face meeting in Seattle  
14 where he informed me that there was a situation.  
15 He informed me there was a possibility that we  
16 would have to move warehouse, but I wasn't  
17 involved in any of the decision making process and  
18 at some stage in the process Owen would have told  
19 me that we have made a decision and we are moving  
20 to Venray.

21 Q. When Mr Roberts told you that  
22 Microsoft was looking into whether or not  
23 Microsoft should move from its distribution center  
24 from Germany I think you told us already that he  
25 said Legal was involved?

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1 Q. So we have got to make sure we have  
2 a clear record otherwise if you look at the  
3 transcript it is going to look like half a  
4 question and answer --

5 A. Okay, no problem.

6 Q. Like that, but it is a hard habit to  
7 break so I will call it out, but try to be a  
8 little patient, it also gives you a chance --

9 A. Okay, I will wait.

10 Q. -- or not. It also gives you a  
11 chance to think about the question --

12 A. Yes.

13 Q. And gives your attorney a chance to  
14 object for the record because if she thinks there  
15 is something wrong with the question --

16 A. Perfect.

17 Q. -- and every now and then you say  
18 "umm hmm" or "ah ha" when you mean to say "yes" or  
19 "no", so need to say yes or no because the Court  
20 Reporter can't take down --

21 A. Okay.

22 Q. -- grunts. You have interrupted me  
23 about four times while you told me you were not  
24 going to. It is a habit that is hard to break  
25 because it is so natural. So talking about you

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1 Q. I am asking you something a little  
2 bit different, I am asking you about when did you  
3 learn that there had been a decision to move  
4 outside of Germany?

5 A. And I can't recall exactly when I  
6 was told that decision.

7 Q. So my question is though, do you  
8 recall how you were told, where you were, who was  
9 there, do you have a recollection of an events  
10 where you were told there was a decision?

11 A. I don't have a recollection of the  
12 specific event.

13 Q. Now, going back very quickly to how  
14 depositions work. In normal conversation it is  
15 really easy to anticipate a question so if you saw  
16 a transcript of someone having a normal  
17 conversation you would have half a question,  
18 answer, and then the rest of the question may be,  
19 probably not even the rest of the question because  
20 that is just how people communicate. Here it is  
21 important that you wait for your response until  
22 the question is finished even though you know what  
23 the rest of the question is going to be. That is  
24 because she has to take down everything?

25 A. Okay.

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1 asking in chronology?

2 A. It would have been somewhere between  
3 February and I don't know, April/May, but I just  
4 don't recall exactly when.

5 Q. Well, when you were told by -- by  
6 Mr Roberts?

7 A. Yes, Mr Roberts. Yes.

8 Q. So let me get back to specifically  
9 what he told you about the reason that there was  
10 going to be a move and whenever he told you, okay?  
11 In fact, first let me ask you do you actually  
12 recall the time that he told you, I don't mean the  
13 date, but do you have a memory whether it was on  
14 the phone or, you know, sitting in a lobby, do you  
15 have any specific memory as to the event?

16 A. Yes, as I have already said it was a  
17 face-to-face meeting.

18 Q. This is the one in Seattle?

19 A. Yes, in Seattle and it was towards  
20 the end of January.

21 Q. I am trying to distinguish, I  
22 thought you made a distinction, the face-to-face  
23 meetings I think you said they were looking into  
24 making a move?

25 A. Yes, that's right.

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1 asking you as a chronology not as a specific date,  
2 did you have an understanding that Microsoft had  
3 made a decision to move the distribution center to  
4 Germany before this letter was sent out with your  
5 signature?

6 MS KELLY: Object to the form. Lack of  
7 foundation. Vague. Asked and answered.

8 A. I can't recall exactly.

9 MR PRICE: Well, if you look, we showed  
10 you Davidson Exhibit 7, and that included a  
11 March 30th, 2012 letter sent out under your  
12 signature to Arvato asking that the termination  
13 date be changed and also included a response from  
14 Arvato dated April 3, 2012, we were just looking  
15 at that?

16 A. Umm hmm. Yes.

17 MR PRICE: So can you tell us before  
18 these exchanges whether or not you had been  
19 informed that Microsoft had made a decision to  
20 move the EMEA distribution center outside of  
21 Germany?

22 MS KELLY: Object to the form.

23 A. I can't recall exactly when I was  
24 told by phone.

25 Q. Again I am not asking exactly, I am

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1 Germany, you may not know the exact date but you  
2 may know when you learned it in relation to other  
3 events, right?

4 A. Right.

5 Q. So one event that I pointed out to  
6 you that you have looked at is this February 13th,  
7 2012 termination notice that was sent to Arvato  
8 under your signature?

9 A. Umm hmm.

10 Q. You have seen that, correct?

11 A. Correct.

12 Q. So my question is; is it your best  
13 recollection that you learned that Microsoft had  
14 made a decision to move the distribution center  
15 out of Germany before the date of this letter?

16 MS KELLY: Object to the form.

17 A. I cannot recall exactly when I was  
18 informed.

19 Q. And that's not what I am asking  
20 because sometimes people can't recall exactly when  
21 they were informed. I am asking if you can give  
22 me a chronology in relation to a document that is  
23 right in front of you right now, that is the  
24 February 13th, 2012 termination notice that you  
25 signed and was sent to Arvato. So I am just

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1 me something you know nothing about, I am entitled  
2 to your best recollection and your best estimate.  
3 An estimate might be for example, how big is this  
4 table, how far are you sitting from me. You have  
5 actual knowledge of that because you are sitting  
6 across the table from me. If I asked you how far  
7 I was sitting across from my wife two nights ago  
8 you would have no idea about that, you would be  
9 speculating. I don't want you to guess on things,  
10 okay?

11 A. Okay.

12 Q. Now, in terms of dates it is  
13 sometimes difficult to remember exact dates from  
14 something that happened years ago, and of course  
15 that is one of the reasons that you have  
16 documentation, right?

17 A. Yes.

18 Q. And, in fact, that is one of the  
19 reasons Microsoft keeps documentation so it can go  
20 back to its files and say this is when something  
21 happened, right?

22 A. Right.

23 Q. So what I was asking you in terms of  
24 when you first heard about a decision by Microsoft  
25 to move the EMEA distribution center outside of

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1 A. Yes, I do.

2 Q. And do you know what that means?

3 A. Not -- I have a vague understanding  
4 of it, but exactly what it means no, I don't.

5 Q. You have a vague understanding that  
6 there is a criminal penalty if you intentionally  
7 gave untruthful testimony?

8 A. Yes, that I would know. Yes.

9 Q. Now, in terms of a procedure you  
10 understand that your attorney has the right to  
11 make objections?

12 A. Yes.

13 Q. Now if she makes objections and does  
14 not instruct you not to answer then you are  
15 required to give me an answer unless you don't  
16 understand the question, okay, do you understand  
17 that?

18 A. Yes.

19 Q. And the answer may be "I don't know"  
20 or "I don't recall"?

21 A. Okay.

22 Q. If, of course, that is a truthful  
23 answer. Now sometimes you will be asked to give  
24 estimates or your best recollection, and although  
25 we don't want you to speculate, for example, tell



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1 the decision to do that, to terminate the  
2 relationship?

3 MS KELLY: Object to the form. Lack of  
4 foundation. You are putting words in her mouth at  
5 this point.

6 MR PRICE: That is called a legal  
7 question you are allowed to ask.

8 MS KELLY: No, not if it is wrong.  
9 Object to form. Lack of foundation. Calls for  
10 speculation. She has answered the question in  
11 terms of memory of dates. Why don't you repeat  
12 the question and Miss Daly can answer?

13 MR PRICE: Miss Daly, a couple of  
14 things. Is this the first time you have had your  
15 deposition taken?

16 A. Yes.

17 Q. Congratulations. Have you had a  
18 chance to talk with your counsel about the basic  
19 ground rules?

20 A. Yes.

21 Q. Of course one of the ground rules is  
22 you are supposed to tell the truth, right?

23 A. Of course.

24 Q. And that you are testifying under  
25 penalty of perjury, do you understand that?

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1 say that we are terminating the contract and we  
2 are moving to Venray, but I don't remember exactly  
3 which month or which week that was.

4 Q. Sure. If you look at Davidson  
5 Exhibit 4 which I showed you, that is the  
6 February 13th, 2012 termination notice that you  
7 signed and was sent to Arvato. So is it your best  
8 recollection then that prior to that date, prior  
9 to sending out the termination notice that you had  
10 somehow learned that Microsoft had made the  
11 decision to move the distribution center from  
12 Germany to somewhere else?

13 A. Yes, I would have learned from Owen  
14 Roberts.

15 Q. Before that date?

16 MS KELLY: Objection to form.

17 A. Before that date, I am assuming it  
18 was before the date. I don't recall the date.  
19 But Owen would have rung me and given me a heads  
20 up to say what was happening.

21 MR PRICE: You might not remember the  
22 exact dates but you have some memory of the  
23 chronology, correct, that before you sent the  
24 termination letter to Arvato, before you did that  
25 you were given a heads up that Microsoft had made

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1 A. Yes.

2 Q. And when it was that?

3 A. I don't remember.

4 Q. You recall earlier I showed you a  
5 February 13th, 2012 letter you sent to Arvato?

6 A. Yes.

7 Q. Terminating their relationship with  
8 Arvato?

9 MS KELLY: Object to the form.

10 MR PRICE: Were you told before then  
11 that a decision had been made to move the  
12 distribution center?

13 A. I have no recollection of the exact  
14 dates but ...

15 Q. Ms Daly, it is a while ago so some  
16 times you can't remember exact dates so that is  
17 why we try and say you can't remember an exact  
18 date but you can say whether it was before or  
19 after something else happened --

20 A. Yes.

21 Q. -- that you do know the date on?

22 A. Owen was my main point of contact  
23 for this because he made it very clear that is how  
24 he wanted to handle the process, so Owen would  
25 have given me in a telephone call a heads up to

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1 A. Yes.

2 Q. So Mr Roberts specifically told you  
3 that Legal was involved in the decision to move  
4 the distribution center from Germany, correct?

5 A. Yes, he didn't say -- he gave me a  
6 heads up there wasn't a decision made to move,  
7 this was back in January. So he told me there was  
8 a situation, there was discussions on-going. He  
9 did tell me it was due to a patent issue. He  
10 didn't give me any details, but his main message  
11 to me was that my responsibility and I had to  
12 focus on the channel operations, I was not to get  
13 distracted and that Jeff Davidson would be the key  
14 person he would work with in this situation.

15 Q. Okay. I think we may have a  
16 clarification and I want to make sure that the  
17 record shows. As of the first conversation that  
18 you had with Mr Roberts in January 2012 he told  
19 you there were discussions about moving from  
20 Germany but a decision had not been made?

21 A. All he said to me was there was  
22 discussions happening.

23 Q. Did there come a time when you were  
24 told a decision had been made to move the EMEA  
25 distribution center from Germany?

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1 A. Yes, it was in the corridor, just a  
2 few minutes.

3 Q. Earlier you said that the decision  
4 to move out of Germany that Legal was involved,  
5 correct?

6 A. That's what Owen said at the time.

7 Q. Again anything you know about why  
8 the move took place is what you heard from  
9 Mr Roberts?

10 A. Yes.

11 Q. So when Mr Roberts told you Legal  
12 was involved in a decision to move the  
13 distribution center out of Germany, did he tell  
14 you if he had any role himself in making that  
15 decision?

16 MS KELLY: It's been asked and answered.

17 A. No, he didn't tell me directly but  
18 he was the global supply chain manager so he was  
19 clearly involved in the process, but I do not know  
20 as to what meetings he was in. I do not know  
21 specifically what decisions he would have made.  
22 That I don't know.

23 MR PRICE: So Mr Roberts told you -- I  
24 am trying to get clear what he told you as to what  
25 you assumed, do you understand?

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1 Q. So the e-mail seems to indicate that  
2 it was Fergus Rigley who decided you needed to  
3 know and gave you some information?

4 A. That is incorrect. It was Owen  
5 Roberts decided I needed to know and gave me the  
6 information prior to this e-mail.

7 Q. Did you have any conversation with  
8 Fergus Rigley concerning the topic --

9 A. Yes --

10 Q. -- let me finish -- that the topic  
11 of moving the distribution center from Germany to  
12 somewhere else?

13 A. Yes, Fergus mentioned to me that he  
14 knew that there was discussions happening and I  
15 just said to Fergus I am aware of it but it is  
16 confidential and I am not involved in the process.

17 Q. So let me go back to the  
18 conversation that you say you had with Mr Roberts,  
19 and I think you said you were in Seattle?

20 A. In Seattle, yes.

21 Q. The conversation that you had with  
22 him was that face-to-face or by phone?

23 A. Face-to-face.

24 Q. You said it was just like a few  
25 minutes?

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1 pending case that he didn't know what the decision  
2 was going to be, but it may impact the  
3 distribution centre. It was confidential. I was  
4 not going to be involved in the discussions in the  
5 process, it was going to be handled by Jeff  
6 Davidson and that was my instruction and that's  
7 what I agreed with Owen.

8 Q. So is it your best recollection then  
9 that when you received Davidson Exhibit 1 that  
10 when you read that first e-mail there that you  
11 knew what Mr Roberts was referring to?

12 A. I knew what he was referring to yes,  
13 because he had told me, he had given me a heads  
14 up. He told me it was confidential and that I  
15 would not be involved in the process.

16 Q. So you just don't recall one way or  
17 another whether or not you looked at the other  
18 e-mails that were attached to this e-mail?

19 A. No, I don't. No, I don't.

20 Q. You mentioned that you said you  
21 thought that Owen Roberts briefed you, if you look  
22 at the e-mail to you it says: "Fergus decided you  
23 needed to know and I have to tell you both no one  
24 else needs to know." Do you see that?

25 A. Yes, I do. Yes.

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1 he said "no one else needs to know", right?

2 MS KELLY: Object to the form. This has  
3 been asked and answered.

4 MR PRICE: Correct?

5 A. Sorry, I feel I am repeating myself  
6 all the time.

7 MR PRICE: You may be but don't worry  
8 about it --

9 A. So Owen --

10 MR PRICE: Wait I am not sure you have  
11 the question. So my question is when you received  
12 this and you read just the top part there, do you  
13 see just the top part addressed to you?

14 A. Yes.

15 Q. It talks about: "I have to tell you  
16 both no one else needs to know", do you see that?

17 A. Yes.

18 Q. Is it fair to say when you read that  
19 you wanted to have some understanding as to what  
20 he was talking about, need to know what, okay?

21 A. Okay.

22 Q. Is that fair?

23 A. Owen -- towards the end of January I  
24 was in Seattle, Owen told me in about three or  
25 four minutes, gave me a heads up that there was a



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1 recollection of this e-mail thread.

2 MR PRICE: Would you sometimes get  
3 e-mails from people that contained e-mails to  
4 which you were not originally party?

5 A. Yes. Yeah.

6 MR PRICE: And would it have been your  
7 practice when that happened, when you got e-mails  
8 such as this which contained an entire chain,  
9 would it have been your practice to look over the  
10 chain to see what people were talking about?

11 MS KELLY: Object to form.

12 A. Only if it was necessary.

13 MR PRICE: So when you say only if it  
14 was necessary, do you see at the top of the e-mail  
15 chain which is the only one -- only e-mail  
16 addressed to you says:

17 "Not sure how my message last week  
18 about 'need to know' was misinterpreted, so now  
19 Fergus decided you needed to know, I have to tell  
20 you both no one else needs to know." Do you see  
21 that?

22 A. Yes.

23 Q. And would it be fair to say that  
24 when you received this you wanted to have some  
25 idea as to what Mr Roberts was referring to when

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1 confidential and a small number of people were  
2 involved in this process and he told me at the  
3 time that I was not to be involved in this process  
4 until I got further notice from him.

5 Q. Let me get back to my question?

6 A. Yes.

7 Q. You were being given a heads up as  
8 to what was happening, correct?

9 A. Yes.

10 Q. And to be given a heads up you had  
11 to have some information, be told some information  
12 about what was happening?

13 A. Yes.

14 Q. And you received this e-mail which  
15 included a chain which discussed, among other  
16 things, what was happening, correct?

17 A. Correct.

18 MS KELLY: Object to the form.

19 MR PRICE: So is it your belief that one  
20 of the things that you did as getting a heads up  
21 as to what was happening was read the e-mail  
22 chain?

23 MS KELLY: Asked and answered.

24 A. I don't remember if I read the  
25 e-mail chain. Right now I honestly have no

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1 Q. First of all this is an e-mail that  
2 you received from Mr Roberts?

3 A. Yes.

4 Q. And if you look at this does this  
5 refresh your recollection that it was around  
6 January 20th, 2012 that you were told about  
7 discussions about moving the distribution center  
8 from Germany to somewhere else?

9 A. Yes, I knew it was sometime earlier  
10 in the year. So yeah, the end of January  
11 beginning of February.

12 Q. So when you received the e-mail from  
13 Mr Roberts you see there is a chain here and you  
14 are not on the rest of the e-mails?

15 A. No, I am not. No.

16 Q. When you read this e-mail from Mr  
17 Robert where he said: "None else needs to know  
18 about this"?

19 A. Yes.

20 Q. Did you read the chain to find out  
21 what he was talking about?

22 A. I can't recall whether I read this  
23 exact chain. It doesn't look familiar to me right  
24 now, but clearly Owen gave me a heads up as what  
25 was happening. He clearly called out it was

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1 Davidson dated January 20th, 2012, do you see  
2 that?

3 A. Yes.

4 MS KELLY: Before you go on, if she  
5 needs time to review the whole chain can you give  
6 her time to do that?

7 MR PRICE: If you need time to review  
8 the whole chain go ahead. First let me ask you  
9 Ma'am, have you seen this before, Daly Exhibit 1.

10 A. I don't recall.

11 MR PRICE: Is this one of the documents  
12 that you saw yesterday?

13 MS KELLY: I am going to object and  
14 instruct not to answer. And work product.

15 A. Okay.

16 MR PRICE: Have you had a chance now to  
17 review Daly Exhibit 1?

18 A. Yes.

19 Q. Do you see at the top of Daly  
20 Exhibit of this e-mail chain there is an e-mail  
21 from Owen Roberts to you and Noel Moore, Jeff  
22 Davidson copied, dated January 20th, 2012?

23 A. Umm hmm.

24 Q. Is that a yes?

25 A. Yes.

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1           A. Well he would have said that  
2 Microsoft has made a decision, and that he also  
3 told me that it was -- that it was reformed --  
4 that he was informed by Legal or legal  
5 representatives, and my understanding at the time  
6 was that we were -- that there was a patent case  
7 and there was a risk that we wouldn't be able to  
8 do business in Europe and to mitigate the risk we  
9 were moving the warehouse to Venray to enable us  
10 to continue selling Xbox. That was my general  
11 understanding that Owen would have informed me.

12           Q. Let's break that down. First let's  
13 focus on when you think you were informed that a  
14 move was going to be made out of Germany. If we  
15 can put before you what is going to be marked as  
16 Daly Exhibit 1.

17           (Exhibit 1 marked for identification)

18           Do you have in front of you what we have  
19 marked as Daly Exhibit 1?

20           A. Umm hmm.

21           Q. Do you see at the top -- first you  
22 see this looks like an e-mail chain?

23           A. Yes.

24           Q. And at the top it is an e-mail from  
25 Owen Roberts to Theresa Daly, Noel Moore and Jeff

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1 January. It was early in the year when he gave me  
2 a heads up. He told me my remit was to focus on  
3 Channel operations to make sure that part of the  
4 business was running smoothly and Jeff Davidson  
5 would be the person dealing with the process that  
6 was at hand. And then he would have informed me  
7 intermittently by telephone as to what was  
8 happening, but I don't recall exactly when those  
9 dates were.

10 Q. Did Mr Roberts tell you what his  
11 role was in connection with any move by the  
12 distribution center out of Germany?

13 A. What do you mean by his role?

14 Q. Let me rephrase. Did Mr Roberts  
15 tell you anything about his role in any decision  
16 about moving the distribution center out of  
17 Germany, did he say: I made the decision? Did he  
18 say: I was told to do that. Did he say: I don't  
19 know how this happened. Anything about whether he  
20 was involved in making the decision to move  
21 Microsoft's EMEA distribution center out of  
22 Germany?

23 A. No, he didn't tell me directly.

24 Q. Did he tell you indirectly how he  
25 was involved?

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1 Q. Let me ask, would changing the EMEA  
2 distribution services vendor have any impact on  
3 Channel Operations?

4 A. Yes, it would. Yes.

5 Q. What impact would it have on Channel  
6 operations?

7 A. Because I deal directly with our  
8 sales organization customers, if there was any  
9 change in service level as in delayed orders, or  
10 missed orders or incorrect paperwork, that  
11 escalation would come via myself and my team from  
12 the sales organization and from our customers.

13 Q. Did there come a time when you were  
14 informed by someone that Microsoft was going to  
15 change its distribution center location from  
16 Germany to some place else?

17 A. Yes, I was informed by Owen Roberts.

18 Q. And when were you informed?

19 A. I don't remember. I mean, I  
20 remember he gave me a heads up as of the situation  
21 in February.

22 Q. 2012?

23 A. As far as I recall.

24 Q. Of 2012?

25 A. Or it may have been the end of

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1 Microsoft making a change in its distributor or  
2 moving from Germany because of any litigation  
3 between Microsoft and Motorola?

4 MS KELLY: Object to the form. Can you  
5 clarify when you say first-hand knowledge?

6 MR PRICE: You have answered a few times  
7 questions concerning first-hand knowledge, what  
8 did you understand that to mean?

9 A. When you say first-hand knowledge I  
10 understand that I was directly involved in the  
11 discussion, that I directly had discussions and  
12 met with partners in Arvato, that is what I  
13 understand. So with that understanding my answer  
14 is no, I was not involved in any discussions. I  
15 did not have first-hand knowledge. If you want to  
16 call it second hand knowledge from Owen Roberts as  
17 a heads up as to what was happening, yes.

18 Q. So anything that you know about the  
19 reason that Microsoft moved its EMEA distribution  
20 center from Germany to the Netherlands, anything  
21 you know you learned from someone else?

22 A. From Owen Roberts primarily. He was  
23 the person who managed this process and he was the  
24 person who would have updated me when he felt it  
25 was necessary.



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1 "As discussed Microsoft is making this  
2 change to avoid any potential disruption to our  
3 business in the event we experience an adverse  
4 outcome in current litigation between Microsoft  
5 and Motorola Mobility in Germany."

6 Do you see that?

7 A. Yes.

8 Q. To begin with you told us at the  
9 time you signed this letter on behalf of Microsoft  
10 and MSCIS in particular that you had not read it,  
11 correct?

12 A. Correct, yes.

13 Q. You told us you don't have  
14 first-hand knowledge of the contents of the  
15 letter, correct?

16 A. Correct, yes.

17 Q. Is it correct, did you have -- is it  
18 correct that you did not have first-hand knowledge  
19 of discussions between Microsoft and Arvato about  
20 potential business disruption as a result of any  
21 litigation between Microsoft and Motorola?

22 A. That is correct, I was not involved  
23 in any discussions.

24 Q. Is it correct that to this day you  
25 don't have any first-hand knowledge about

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1 straight to Jeff.

2 Q. When is the first time that you ever  
3 read the contents of the letter dated April 3,  
4 2012 from Arvato addressed to you, when was the  
5 first time you ever read it?

6 A. I think you showed it to me  
7 yesterday.

8 Q. By "you", the video captioned your  
9 head, you don't mean me?

10 A. No, not you, the Microsoft team  
11 yesterday would have shown me the letter.

12 Q. So that's the first time you ever  
13 read the letter?

14 A. Yes, I don't recall reading it  
15 beforehand prior to yesterday.

16 Q. So do you have any first-hand  
17 knowledge at all about the contents of your  
18 communications, Theresa Daly?

19 A. Yes.

20 Q. With Dr Hans Peter Heulskotter?

21 A. No, I don't.

22 Q. So, for example, the first exhibit I  
23 saw here which is Davidson 4?

24 A. Yes.

25 Q. The second sentence says:

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1 MSCIS in Microsoft Ireland, the first time was  
2 May 29th, 2013?

3 A. Yes.

4 Q. Do you recall getting a response  
5 from this letter from Arvato?

6 A. To be honest I wouldn't have. I  
7 don't particularly recall the exact response to  
8 the letter.

9 Q. If you look at the second page of  
10 the Exhibit?

11 A. Yes.

12 Q. Still on Davidson Exhibit 7, do you  
13 see there looks like a copy of the letter from Dr  
14 Hans Peter Heulskotter at Arvato to Theresa Daly?

15 A. Yes.

16 Q. Microsoft Ireland that begins:  
17 "Dear Theresa", do you see that?

18 A. Yes.

19 Q. Did you, in fact, receive this  
20 letter from Arvato, Dr Hans Peter Heulskotter to  
21 you?

22 A. Yes, I am sure I did.

23 Q. When you received the letter did you  
24 read it?

25 A. No, I would have forwarded it

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1 you signed it?

2 A. Okay, I repeat again I was the  
3 General Manager with responsibility for Channel  
4 Operations globally. Jeff Davidson was  
5 responsible for Distribution and Logistics  
6 Globally. So this would have been, this letter  
7 and all the contents, the details would have been  
8 discussed and validated by Jeff and Owen Roberts.

9 Q. So the answer to my question is no?

10 A. No.

11 Q. A double negative. So let me ask it  
12 again then. Did you believe that in your position  
13 as General Manager that you should have read this  
14 before signing it, yes or no?

15 A. No.

16 Q. The letter itself, have you read  
17 this letter before, we are sitting here at a  
18 deposition now, apparently you didn't read it at  
19 the time you signed it, has there ever come a time  
20 when you did read the letter?

21 A. Yesterday at our meeting with the  
22 team I was shown the letter.

23 Q. Okay. So your testimony was the  
24 first time you actually read this March 30th, 2012  
25 letter to Arvato that you signed on behalf of

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1 this appears to be a letter that is signed by you  
2 Theresa Daly, correct?

3 A. Correct.

4 Q. And you were signing on for and on  
5 behalf of Microsoft Ireland Operations Limited?

6 A. Yes, correct.

7 Q. So and that is your signature on the  
8 letter?

9 A. Yes, it is. Yes.

10 Q. So before signing this letter did  
11 you have any knowledge of the substance of the  
12 letter?

13 MS KELLY: Object to the form.

14 A. When you say knowledge do you mean  
15 was I aware or was I involved?

16 MR PRICE: Let me take a step back.  
17 Before signing this letter as the General Manager  
18 of MSCIS and for and on behalf of Microsoft  
19 Ireland did you read the letter?

20 A. No, I wouldn't have read the details  
21 of the letter.

22 Q. And were you -- did you think that  
23 as someone signing for and on behalf of Microsoft  
24 Ireland Operations and as the General Manager that  
25 you should have read the letter to Arvato before

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1 terms of Microsoft policy and in terms of  
2 authorized signatures we would have responded --  
3 the letter would have come to me and I would have  
4 passed it directly to Jeff Davidson. It was a  
5 figure head position for the region in terms of  
6 seniority. It was no more than that.

7 Q. So sometimes Microsoft -- let me  
8 repeat that. Let me see if your testimony is the  
9 same about some subsequent communications between  
10 Arvato and Microsoft that appear to involve you?

11 A. Okay.

12 Q. If you would look at what we have  
13 before you.

14 (Previously Marked Davidson Exhibit 7)

15 Miss Daly, you will see previously  
16 marked Davidson 7 which begins with an e-mail on  
17 April 6th, 2012 between Mr Davidson and  
18 Mr Roberts, and then there appear to be  
19 attachments to that, do you see that?

20 A. Umm hmm. Yes.

21 Q. If we can go in chronological order  
22 here, we will start at the last page, the third  
23 page of the exhibit do you see there is a letter  
24 dated March 30th, 2012 to Dr Hans Peter  
25 Heulskotter at Arvato and, again at the bottom

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1           A. Maybe I am not making myself clear.  
2     The person responsible in this case instance for  
3     global distribution and logistics was Jeff  
4     Davidson who reported to Owen Roberts, and Jeff  
5     and Owen were the responsables within Microsoft  
6     for all correspondence and communication with  
7     Arvato.

8           MR PRICE: So why in your understanding  
9     if Hans Peter at Arvato had a response to the  
10    termination letter why would he have responded to  
11    you instead of responding to the people at  
12    Microsoft who were responsible?

13          MS KELLY: Object to the form. The  
14    response is vague. Lack of foundation.

15          A. Could you repeat the question  
16    please?

17          MR PRICE: You told us that the  
18    discussions with Arvato didn't involve you, that  
19    you had no involvement.

20          A. That is correct.

21          Q. So you have also told us that you  
22    believe that Dr Heulskotter, who we refer to as  
23    Hans Peter, responded to you after receiving the  
24    notice of termination?

25          A. So in terms of formality and in

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1 part of any meetings. I was not part of any  
2 telephone calls with Arvato. It just wasn't my  
3 role. I wasn't involved in that process.

4 Q. Well, did Hans Peter respond to the  
5 February 13th, 2012 termination letter?

6 A. I am sure he did.

7 Q. Did he respond to you?

8 A. He would have responded to me as the  
9 signature on the letter.

10 Q. If he wanted -- your understanding  
11 if he wanted to make sure Microsoft knew what his  
12 position was --

13 A. Yes.

14 MS KELLY: Wait.

15 MR PRICE: Who was your understanding he  
16 would have responded to?

17 A. He would have responded -- his  
18 discussion would have been with Owen Roberts and  
19 Jeff Davidson, not with me.

20 Q. So there would have been no reason  
21 for him to respond to you because if he wanted to  
22 deliver a message to Microsoft he could have  
23 talked to someone else?

24 MS KELLY: Object to form. Lack of  
25 foundation.

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1 Q. Well, you didn't send this letter to  
2 somebody at Microsoft, you sent this outside of  
3 Microsoft?

4 A. Yes, Arvato.

5 Q. Is it your testimony that your  
6 belief is that -- started with that, that Arvato  
7 would not have the impression that you wrote the  
8 letter?

9 A. Yes.

10 Q. And that you did sign it?

11 A. Absolutely, yes.

12 Q. Did you have any discussions with  
13 Hans Peter, the person to whom the letter is  
14 written about that?

15 A. No.

16 Q. You had further communications with  
17 Arvato and Hans Peter, correct?

18 A. There was letters I signed. I  
19 didn't have communication with them.

20 Q. After this letter was signed  
21 February 14th, 2012 you had subsequent  
22 correspondence with Arvato, correct?

23 A. There were subsequent letters which  
24 I signed but I did not have any direct  
25 communication, verbal communication. I was not

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1 in fact, you were the person who wrote the letter?

2 MS KELLY: Object to the form.

3 A. I don't understand that question.

4 MR PRICE: Well, do you agree that if  
5 someone looked at this letter and saw your  
6 signature at the bottom that it might give the  
7 appearance that you, in fact, Miss Daly, are the  
8 one who wrote the letter.

9 MS KELLY: Object to the form. Calls  
10 for speculation.

11 A. Who is the someone, who are you  
12 referring to?

13 MR PRICE: I am saying if someone saw  
14 this letter, say someone outside of Microsoft,  
15 someone saw this letter signed by you, do you  
16 agree that that might give that person the  
17 impression that you wrote the letter?

18 MS KELLY: Object to the form. Calls  
19 for speculation. Lack of foundation.

20 A. I just think we have a very clear  
21 structure and organization in Microsoft so the  
22 parties we work with are very aware of that  
23 structure. So for me this doesn't cause any  
24 confusion for Arvato to whom the letter was  
25 directed.

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1 of it, but as I said again, I was not involved in  
2 any of these discussions in any of the meetings.  
3 I was purely a signature on the letter.

4 Q. And being the signatory on the  
5 letter as the senior person in the division did  
6 you do anything to try to educate yourself about  
7 what was going on?

8 A. No, I was specifically told not to  
9 get involved by my manager at the time.

10 Q. So who was it who told you not to  
11 get involved in the substance that is described in  
12 the letter that bears your signature, Davidson  
13 Exhibit 4?

14 A. Owen Roberts.

15 Q. And at the time did you say anything  
16 to them such as: Hey, if I am going to sign this  
17 letter I need to know what's going on?

18 A. Yes, I had a discussion with him to  
19 talk about responsibilities. He made it very  
20 clear that Jeff Davidson was the responsible  
21 general manager in this particular case and I  
22 trusted Jeff.

23 Q. Did you have any understanding  
24 whether or not Microsoft wanted to give the  
25 impression to whoever would see this letter that,

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1 Q. Okay. So if we look at this letter  
2 then, let's stay with the second sentence:

3 "As discussed Microsoft is -- strike  
4 that. Did you have an understanding that this  
5 February 13th, 2012 letter was meant to give  
6 notice of termination to Arvato for services  
7 Arvato had been providing to Microsoft?

8 A. Yes, I had been given a heads up by  
9 my manager Owen Roberts that this process was  
10 happening. He also made it clear that it was not  
11 within my remit. My remit was to focus on my key  
12 job which was Channel Operations. There was  
13 another part of the team dealing with this.

14 Q. So you didn't have an understanding  
15 by signing the February 13th, 2012 letter, which  
16 is Davidson Exhibit 4, that you were sending  
17 Arvato a document which gave them official notice  
18 that their services were terminated, correct?

19 A. Yes.

20 MS KELLY: Object to form.

21 MR PRICE: And did you know that in that  
22 same letter you were also asking Arvato to make a  
23 formal business and cost proposal for services, do  
24 you have an understanding of that?

25 A. I would have a vague understanding

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CERTIFICATE OF DEPONENT

I, Theresa Daly, hereby certify that I have read  
the foregoing pages of my deposition of testimony  
taken in these proceedings Thursday, 30th May 2013  
and, with the exception of the changes listed on  
the next page and/or corrections, if any, find  
them to be a true and accurate transcription  
thereof.

Signed: .....

Name: Theresa Daly

# EXHIBIT 7

**quinn emanuel trial lawyers | silicon valley**

555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL: (650) 801-5000 FAX: (650) 801-5100

May 15, 2013

**VIA E-MAIL**

Chris Wion  
Calfo Harrigan Leyh & Eakes LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104

Re: Microsoft Corp. v. Motorola Mobility, Case No. C10-1823-JLR

Dear Chris:

I write regarding the May 9, 2013 deposition of Jeff Davidson. In addition to the many document production deficiencies identified in Mr. Davidson's deposition, which are set forth in detail in our May 10 letter, Mr. Davidson was unprepared to testify on several issues which fall squarely within Topic 8 of Motorola's Second Rule 30(b)(6) Deposition Notice, on which he was designated to testify. Specifically, Mr. Davidson was not prepared to testify on the following issues:

- what, if any, analysis Microsoft performed with respect to the necessity of relocating the EMEA distribution facilities before Mr. Davidson was involved, or that he was not personally involved in (Davidson Rough Tr., 68:21-25, 213:10-19);
- who at Microsoft had to ultimately approve the move (*id.*, 61:17-62:15);
- whether Microsoft ever previously considered moving distribution facilities in response to a possible injunction (*id.*, 75:18-76:21);
- who in the legal department Shelly McKinley was working with in connection with the possible injunction and relocation (*id.*, 63:21-25);
- what Microsoft did to avoid litigation in Germany (*id.*, 175:7-176:2);

**quinn emanuel urquhart & sullivan, llp**

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May 15, 2013

- Microsoft's motion for an anti-suit injunction and the timing thereof (*id.*, 169:21-170:5, 173:3-5, 224:5-18);
- why Microsoft did not consider relocating the EMEA distribution facility prior to January 2012 (*id.*, 168:17-22);
- how quickly Arvato found a new tenant for the Dueren facility (*id.*, 128:20-25);
- the differences between the Dueren and Venray facilities in terms of products stored, products distributed, revenue generated, etc. (*id.*, 158:15-161:9); and
- how the numbers in Exhibit 16 were generated (*id.*, 206:4-8).

The above issues relate to Microsoft's decision to relocate the EMEA distribution center, other factors considered by Microsoft in connection with relocating the EMEA distribution center, the costs associated with the relocation, and Microsoft's efforts, if any, to mitigate damages, all of which are expressly covered by Topic 8. Yet, Mr. Davidson could not answer questions on these issues. By Thursday, May 16 at 5 pm Pacific, please provide date(s) on which a witness or witnesses will be made available to testify on these issues.

Very truly yours,

A handwritten signature in blue ink, reading "Andrea Pallios Roberts". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrea Pallios Roberts

CC: All counsel

APR

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# EXHIBIT 8

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May 30, 2013

**VIA E-MAIL**

Chris Wion  
Calfo Harrigan Leyh & Eakes LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104

Re: Microsoft Corp. v. Motorola Mobility, Case No. C10-1823-JLR

Dear Chris:

I write regarding various discovery issues relating to Microsoft's claim that it relocated its EMEA distribution facilities as a result of Motorola's alleged breach of contract.

**30(b)(6) Deposition**

First, as explained in my May 15 letter, Mr. Davidson, Microsoft's 30(b)(6) witness on Topic 8 of Motorola's Second Rule 30(b)(6) Deposition Notice, was not prepared to testify on issues that fall within that topic:

- what, if any, analysis Microsoft performed with respect to the necessity of relocating the EMEA distribution facilities before Mr. Davidson was involved, or that he was not personally involved in (Davidson Tr., 217:14-23)<sup>1</sup>;

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<sup>1</sup> My May 15 letter cited to the rough deposition transcript, as that was all that was available at the time. The citations herein are to the final deposition transcript.

**quinn emanuel urquhart & sullivan, llp**

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- who at Microsoft had to ultimately approve the move (*id.*, 63:12-15);
- whether Microsoft ever previously considered moving distribution facilities in response to a possible injunction (*id.*, 76:23-78:12);
- who in the legal department Shelly McKinley was working with in connection with the possible injunction and relocation (*id.*, 65:6-10);
- what Microsoft did to avoid litigation in Germany (*id.*, 179:1-21);
- Microsoft's motion for an anti-suit injunction and the timing thereof (*id.*, 172:20-173:22);
- why Microsoft did not consider relocating the EMEA distribution facility prior to January 2012 (*id.*, 172:7-12);
- how quickly Arvato found a new tenant for the Dueren facility (*id.*, 131:21-25);
- the differences between the Dueren and Venray facilities in terms of products stored, products distributed, revenue generated, etc. (*id.*, 161:24-164:21); and
- how the numbers in Exhibit 16 were generated (*id.*, 210:6-14).

We maintain that Mr. Davidson did not have answers to questions directed at these issues, and this is clear from the deposition transcript. In your May 16 letter in response, you did not address the substance of any of these issues. For example, you do not cite to where in the transcript Mr. Davidson answered these questions. Nor do you explain how these issues do not fall within Topic 8.

In any event, we deposed Mr. Roberts, to whom Mr. Davidson reported, and hoped that he could testify on some or all of these issues. He could not testify as to several of them. Rather, according to Mr. Roberts, the decision to relocate the EMEA distribution facility was a legal decision. (Roberts Tr., 32:4-21) ("I said back in January we were informed that we were -- we were being -- we had a court litigation pending against us which -- which would probably require us to move our facility in order to keep doing business in Europe. If you are asking that question, no, I wasn't part of that decision, that was a legal decision.") Mr. Roberts also did not know what, if anything, Microsoft did to avoid litigation in Germany, the licensing offers made by Microsoft, the German law procedures that were or were not followed by Microsoft, the briefs Microsoft filed in the Washington case and while they were not filed earlier, or why he was not informed of the need to move earlier than January 2012. (*Id.*, 132:5-14, 132:21-23, 106:9-17, 133:14-22.) Ms. Daly similarly could not testify on these issues. These issues bear directly on the proximate cause of the move and Microsoft's efforts, if any, to mitigate damages. Motorola is entitled to this information. If it is someone in the legal department that knows this information, then we need to depose that person. If Microsoft is refusing to provide discovery on these issues based on privilege, then it needs to clearly state as much. It cannot hide the ball by failing to properly educate a 30(b)(6) witness.

Accordingly, by Monday, June 3, please let us know if Microsoft will produce a witness who is appropriately educated to testify on the decisions and actions taken by the Microsoft legal

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department as they relate to the decision to relocate the EMEA distribution facility, and any efforts to mitigate the alleged damages.

### **Documents**

The following categories of documents that we previously requested still do not appear to be included in Microsoft's supplemental document products:

- Microsoft "Network Analysis" reports related to the Duren facility from 2010 through June 2012;
- Communications between Microsoft and Arvato regarding "open book" procedures from 2010 through June 2012
- Arvato's operative lease for the Duren facility for the period from January 2012-June 2012;
- Documents sufficient to show the percentage of the Duren facility Microsoft shared with other tenants and apportionment for how the facility was shared; and
- Communications with Arvato, following the termination of services, indicating that Arvato had a new tenant for the Duren space.

Are these documents still forthcoming? Further, when does Microsoft expect its document production to be complete?

Additionally, in Ms. Mangin's May 15 letter to you, we asked Microsoft to let us know "which custodians' files were previously searched to identify documents relating to Microsoft's claim that it relocated its EMEA distribution facility to the Netherlands." We have not received a response. Please provide one.

### **Privilege Log**

Microsoft's privilege log relating to its claim that it relocated its EMEA distribution facility to the Netherlands appears to be limited to Mr. Davidson's files. Is the privilege log being updated to reflect documents withheld from Mr. Roberts and Ms. Daly's files? Further, given Mr. Roberts' testimony that the decision to move was made by the legal department, it seems likely that there are many additional documents being withheld on the basis of privilege. Please

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confirm that this is the case.

Please provide a response to the issues raised in this letter by June 6.

Very truly yours,

A handwritten signature in blue ink, reading "Andrea Pallios Roberts". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Andrea Pallios Roberts

CC: All counsel

APR

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